

CAPE ELIZABETH  
GREENBELT PLAN

Inventory of Acquired Land/Easements  
(Appendix E)

Prepared by the  
Cape Elizabeth Conservation Commission

With the Assistance of:  
The Greater Portland Council of Governments

February, 1988

INFORMATION CENTER  
COASTAL ZONE

Financial assistance for this study was provided by a grant from the Maine Coastal Program, through funding provided by the U.S. Department of Commerce, Office of Ocean and Coastal Resource Management, under the Coastal Zone Management Act of 1972.

HD  
1387  
.C36  
1988

maine coastal zone management program

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U. S. DEPARTMENT OF COMMERCE NOAA  
COASTAL SERVICES CENTER  
2234 SOUTH HOBSON AVENUE  
CHARLESTON, SC 29405-2413

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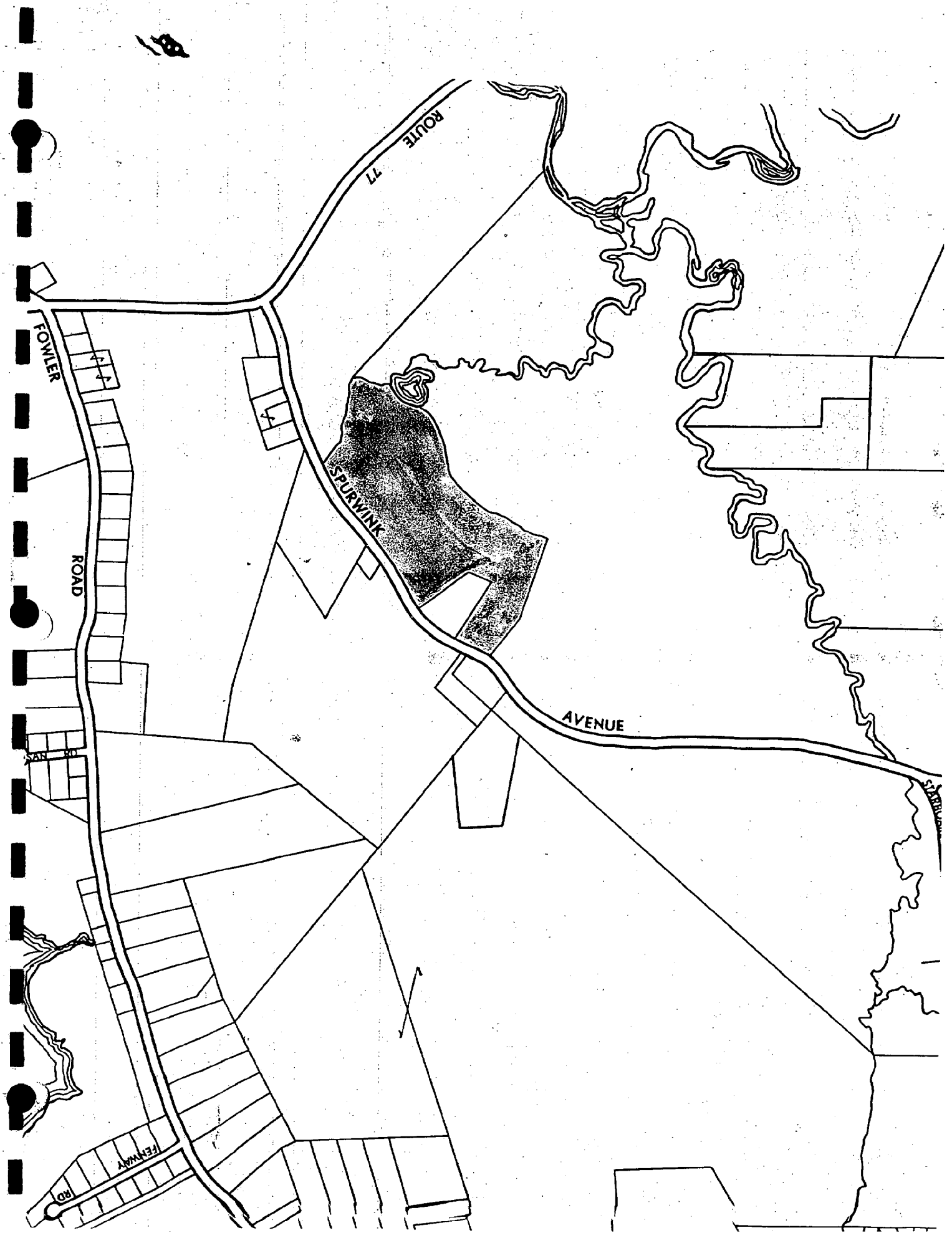
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SEP 8 1997

**TOWN-OWNED  
LAND/EASEMENTS**

**SPURWINK MARSH**





Town

CONSERVATION EASEMENT

THIS INDENTURE made this fifth day of August, 1981, by and between Maine Coast Heritage Trust, a non-profit corporation organized and existing under the laws of the State of Maine and having a place of business in Portland in the County of Cumberland and State of Maine, hereinafter referred to as the "Grantor", and the Town of Cape Elizabeth, a governmental body having its principal office at Ocean House Road, Cape Elizabeth, Cumberland County, Maine, hereinafter referred to as the "Grantee",

W I T N E S S E T H:

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, as amended, Sections 667 and 668, conservation restrictions in the form of conservation easements were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Maine Revised Statutes, 1964, as amended, (Title 30, Sections 3851 and 3801) provides for the establishment of Conservation Commissions and authorizes such Commissions to receive gifts, and to acquire land and conservation easements in the name of the municipality; and

WHEREAS, Grantee at a Council Meeting held on April 26, 1971 by vote of its Legislative Body, established the Town of Cape Elizabeth Conservation Commission; and

WHEREAS, Grantee has determined that for the preservation of the open space and scenic values of the Town of Cape Elizabeth, it is in the public interest to acquire a Conservation Easement over the land hereinafter described; and

WHEREAS, Grantor and Grantee recognize and acknowledge a common purpose to preserve the natural quality, character and

scenic attractiveness of the hereinafter described property for the benefit of the residents of Cape Elizabeth and public at large, and to conserve, protect and prevent the use of the land hereinafter described in any manner which would conflict with the maintenance of the land in its predominantly natural, open and scenic condition; and

WHEREAS, Grantor is the owner in fee of real estate consisting of a parcel of land (hereinafter referred to as the "Property") located in the Town of Cape Elizabeth, in Cumberland Country, Maine and described in a deed from Alan Lindsay, sole Executor of the Last Will and Testament of P. Shaw Sprague, and said Alan Lindsay and A. Ward Wagner, Jr., sole acting Trustees under said Last Will and Testament, to Grantor, dated December 2, 1980, and recorded in Book 4716, Page 41, of the Cumberland Country, Maine, Registry of Deeds; and

WHEREAS, Grantee at a Council Meeting held on June 22, 1981, by vote of its Legislative Body, was authorized to accept a Conservation Easement affecting portions of the Property described below, for the purposes set forth herein;

NOW, THEREFORE, Grantor, for and in consideration of the facts above recited and of the covenants herein contained and as an absolute and perpetual gift, does hereby freely give, grant and convey unto Grantee, its successors and assigns forever, a Conservation Easement in perpetuity over the Property consisting of the following: Grantee, its successors or assigns, or its authorized representative in a reasonable manner consistent with the conservation objectives of this conveyance and upon reasonable notice to Grantor, its successors and assigns, shall have the following affirmative rights:

1. The right of public entry to the Property for the purpose of using the aforementioned recreational trail shall not be in such fashion as to interfere with the privacy of Grantor, its successors and assigns, and shall be subject to the supervision and control of Grantee, its successors and assigns.
2. Grantor, its successors and assigns, does not create any duty of care to keep said recreational trail safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous condition, use, structure or activity on such premises to persons entering for recreational purposes, nor extend any assurance that the premises are safe for any such purposes, nor make any person entering upon said trail an invitee or licensee to whom a duty of care is owed, nor assume responsibility for or incur liability for any injury to person or property caused by any act of any person, or any other cause, and it is expressly intended that all activities of Grantee and of the general public entering upon the property be subject to the limited liability provisions of Title 14, Maine Revised Statutes, 1964, as amended, Section 159-A.
3. If any part of this instrument shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of the instrument.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee and its successors and assigns forever.

It is the intention of the parties hereto that the grants of easements and covenants herein shall be construed as

1. The right to enter and to remove trees and other vegetation from the southern one-third of the Property, consisting of approximately six acres, more or less, described in Exhibit A and shown on Exhibit B, both attached hereto and made a part hereof, for the purpose of maintaining open fields and meadows for the benefit of the public's view of the Property and view of the Spurwink River marsh from off the Property, provided Grantor, its successors and assigns, fails to maintain such open fields and meadows;
2. The right to enter the Property and (a) to clear, mark, relocate and maintain, from time to time, one meandering six (6) foot wide outdoor trail traversing the Property to be open to members of the general public for foot travel and cross-country skiing use, and (b) to construct, relocate, replace and maintain appropriate devices suitable to prevent entry on or use of said trail by any type of mechanized vehicle; said trail to be within a strip of land twenty (20) feet wide within the southern one-third of the Property and fifteen (15) feet wide within the northern two-thirds of the Property, said strip to be located along and within the western and southern boundaries of the Property contiguous to the Spurwink River marsh and Pollack Brook in approximately the location shown on Exhibit B attached hereto and made a part hereof.

In furtherance of the foregoing affirmative rights, Grantor and Grantee make the following covenants for themselves, their successors and assigns, which shall run with and bind the land in perpetuity.

EXHIBIT A

SOUTHERLY ONE-THIRD OF PROPERTY OF  
MAINE COAST HERITAGE TRUST

A certain lot or parcel of land situated on the northwesterly side of Spurwink Avenue in the Town of Cape Elizabeth, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at a point on the northwesterly side of Spurwink Avenue, on the southwesterly side of an old unpaved road, which runs generally northwesterly from Spurwink Avenue and ends near the ruins of a former cabin or shack, said point of beginning being approximately three hundred (300) feet northeasterly along Spurwink Avenue from the center of a culvert where Pollack Brook meets Spurwink Avenue; thence running along and following the southwesterly or westerly side of said old road the following approximate courses and distances: N 20° W one hundred seventy-five (175) feet; northwesterly seventy-five (75) feet; and N 5° W two hundred twelve (212) feet to the end of said old road; thence running N 30° W to the Spurwink River marsh, but excluding the existing old stone foundation and that land within six (6) feet of said foundation on all sides; thence running generally southwesterly, southerly and southeasterly along and following said marsh and Pollack Brook to the northwesterly side of Spurwink Avenue and the most southerly corner of the Property conveyed to Grantor by deed of Alan Lindsay, Executor, et al., dated December 2, 1980, recorded in Cumberland County Registry of Deeds in Book 4716, Page 41; thence running northeasterly along the northwesterly side of Spurwink Avenue to the point of beginning. The above courses are magnetic, 1981.

Meaning and intending to describe the southerly one-third (1/3) of the Property conveyed to Grantor by deed of Alan Lindsay, Executor, et al., dated December 2, 1980, recorded in Cumberland Country Registry of Deeds in Book 4716, Page 41, as also shown on

"conservation restrictions" as said term is defined in Section 667 of Title 33 of the Revised Statutes of the State of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon Grantor, its successors and assigns, and upon the Property, and shall inure to the benefit of Grantee, its successors and assigns. Should it be necessary or convenient at any time in the future in connection with any action of Grantee to obtain the agreement or approval of Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at any time, shall be deemed to be the agreement or approval of all the owners of the Property.

In consideration for the rights herein granted, Grantee, its successors and assigns, by its acceptance hereof, agrees to undertake the protection of the Property in accordance with the conditions set forth above.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed in its corporate name and sealed with its corporate seal by Harold E. Woodsum, Jr., its President, thereunto duly authorized, all as of the day and year first above written.

Signed, Sealed and Delivered  
in presence of

Laurence B. Corro

MAINE COAST HERITAGE TRUST

By

Harold E. Woodsum, Jr.  
Its President

STATE OF MAINE  
COUNTY OF CUMBERLAND, ss.

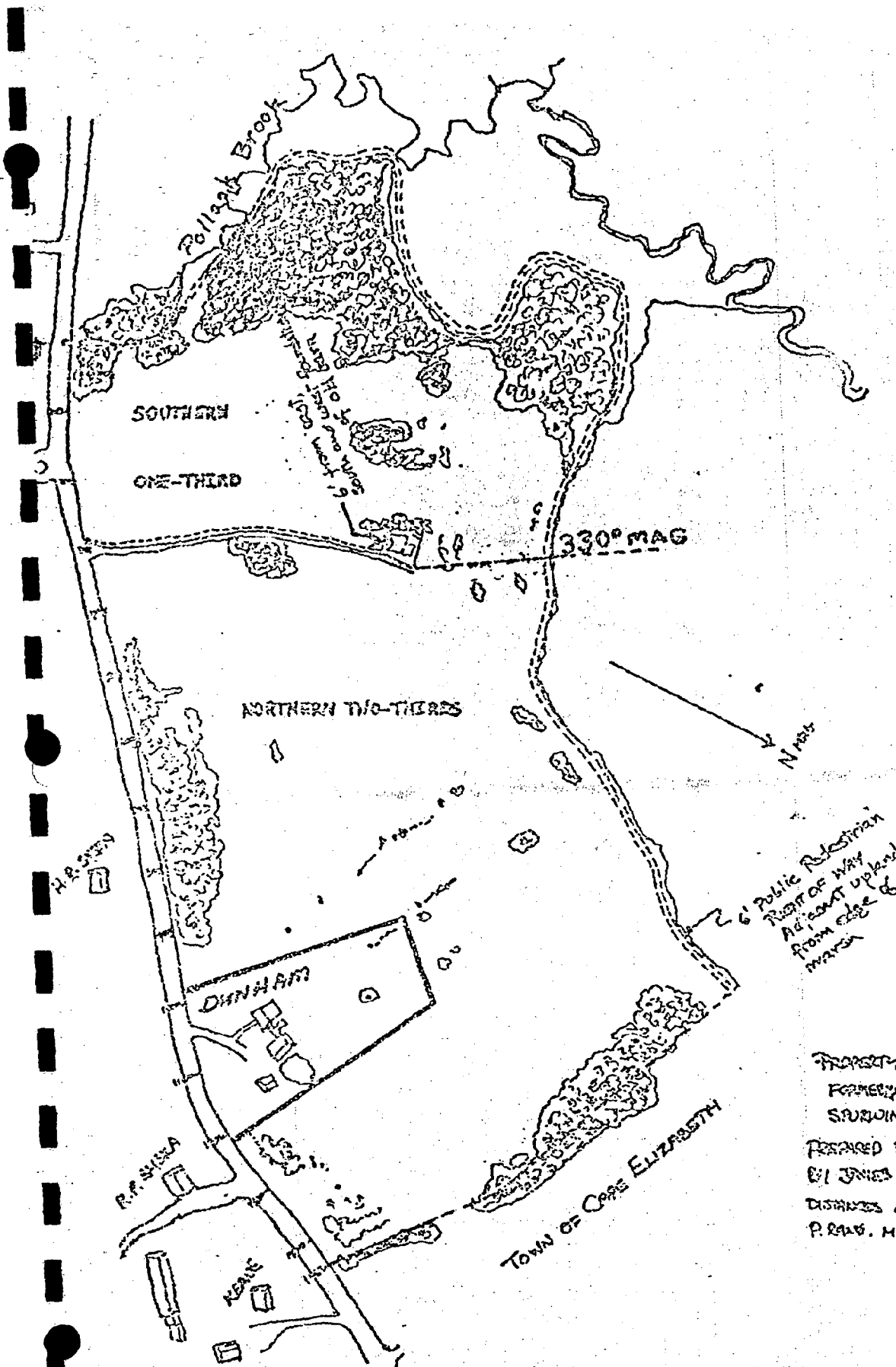
AUGUST 5, 1981

Personally appeared the above named Harold E. Woodsum, Jr., President of Maine Coast Heritage Trust and acknowledged the above instrument to be the free act and deed of Maine Coast Heritage Trust and his free act and deed in his said capacity.

Before me,

Laurence B. Corro  
Notary Public

100'  
150'  
 $\frac{1}{2}" = 100\text{ft.}$



PROPERTY OF MAINE COAST HERITAGE TR  
FORMERLY OF P. OWEN CREAGUE  
SPURDINK ROAD, COPE ELIZABETH  
PREPARED BY TRUCE OF AERIAL PHOTOGRAPH  
BY JAMES W. SMALL 6-1-76, # 564  
DISTANCES MEASURED BY G. IRDAUN AND  
P. RAY. MAY, 1981

AUG 6 1981

REGISTRY OF DEEDS CUMBERLAND COUNTY, MAINE  
Received at 2 H 40 M P M. and recorded in  
BOOK 4837 PAGE 277



## CONSERVATION EASEMENT

THIS INDENTURE made this fifth day of August, 1981 by and between Maine Coast Heritage Trust, a non-profit corporation incorporated under the laws of the State of Maine, hereinafter referred to as the "Grantor", and the United States of America and the Town of Cape Elizabeth, a governmental body having its principal office at Ocean House Road, Cape Elizabeth, Cumberland County, Maine, hereinafter referred to as the "Grantees",

### W I T N E S S E T H:

WHEREAS, by Acts of Congress providing for the establishment of the United States Fish and Wildlife Service and providing for the establishment of the Rachel Carson National Wildlife Refuge in the State of Maine, the Secretary of the Interior is authorized, in his discretion, to accept on behalf of the United States such lands, easements, and buildings, lying within the bounds of certain portions of Cumberland County, and York Country, as may be donated for the extension of said Refuge; and

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, as amended, Sections 667 and 668, conservation restrictions in the form of conservation easements were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Maine Revised Statutes, 1964, as amended (Title 30, Sections 3852 and 3801), provides for the establishment of Conservation Commissions and authorizes such Commissions to receive gifts, and to acquire land and conservation easements in the name of the municipality; and

WHEREAS, the Town of Cape Elizabeth at a Council Meeting held on April 26, 1971 by vote of its Legislative Body, established the Town of Cape Elizabeth Conservation Commission; and

WHEREAS, Grantor and Grantees, recognizing the unique, natural character of the Spurwink River marsh landscape and its essential place in the scenic beauty and ecology of the area in the vicinity of Rachel Carson Wildlife Refuge and of the Town of Cape Elizabeth, acknowledge a common purpose to conserve the scenic and ecological values of Spurwink River marsh and surrounding lands and to prevent its use or development for any purpose or in any manner that would conflict with the maintenance of said region as an open space and predominantly natural area; and

WHEREAS, said common purpose is shared by other owners of land at, or in the vicinity of, said region; and

WHEREAS, the Secretary of the Interior has determined that for the preservation of the natural and scenic condition of the area described in said Acts, it is in the public interest to acquire a Conservation Easement, and the Town of Cape Elizabeth, by vote of its Legislative Body, at a Council Meeting on June 22, 1981, has also been authorized to acquire a Conservation Easement, over certain real property (hereinafter referred to as the "Property"), of which Grantor is the owner in fee, consisting of a parcel of land located on Spurwink Avenue, Town of Cape Elizabeth, in Cumberland County, State of Maine, described as follows:

A certain lot or parcel of land with any buildings thereon, situated on the northwesterly side of Spurwink Avenue in the Town of Cape Elizabeth, County of Cumberland and State of Maine, bounded northeasterly by the Cape Elizabeth Town Farm; southeasterly by Spurwink Avenue; southwesterly by Riverside Cemetery; and northwesterly by the salt marsh; containing sixteen and one-half (16 1/2) acres, more or

less. Being the same premises conveyed by Persis B. Blethen to Mary E. Jordan by deed dated May 13, 1882 and recorded in Cumberland County Registry of Deeds in Book 488, Page 87. Excepting, however, so much of said premises as was conveyed by Mary E. Jordan, et al., to the Inhabitants of the Town of Cape Elizabeth by deed dated May 26, 1882 and recorded in said Registry of Deeds in Book 488, Page 269, and excepting that portion conveyed by P. Shaw Sprague to Linwood Burnell Dunham, et al., by deed dated March 31, 1970 and recorded in Cumberland County Registry of Deeds, Book 3124, Page 802.

Being the same premises conveyed to Grantor by deed of Alan Lindsay, sole Executor of the Last Will and Testament of P. Shaw Sprague, and said Alan Lindsay and A. Ward Wagner, Jr., sole acting Trustees under said Last Will and Testament, dated December 2, 1980 and recorded in said Registry of Deeds in Book 4716, Page 41.

NOW THEREFORE, Grantor, for and in consideration of the facts above recited and of the covenants herein contained and as an absolute and perpetual gift, does hereby freely give, grant and convey unto Grantees and their successors and assigns forever, for the benefit of the public, a Conservation Easement in perpetuity over the Property, consisting of the following: the right of public view of the Property from public road and other public lands and rights of way in its natural, scenic, open condition; the right of Grantees, in a reasonable manner and at reasonable times, to enter and inspect, and to enforce by proceedings at law or in equity the covenants hereinafter set forth; and, in furtherance of the foregoing affirmative rights, the following covenants are hereby made by Grantor, on behalf of itself, its successors and assigns, which shall run with and bind the land in perpetuity;

1. The Property shall be used for single-family residential or conservation purposes only. No commercial, industrial or mining activities shall be permitted on the Property except for a) agriculture and b) home industries. No apartment buildings, multi-family units, motels or hotels shall be constructed on the Property.

2. No structures of any kind, temporary or permanent shall be located on the Property, except there is retained in Grantor, its successors and assigns, the following rights:

- A. The right to build, within an area consisting approximately of the northern two-thirds of the Property--meaning to be that area labeled "northern two-thirds" as shown on Exhibit A which is attached to and made a part of this Indenture--one (1) single-family residential building and up to three (3) non-residential accessory structures customarily used in connection with a single-family residence, and one (1) wind machine for the purpose of generating and storing electric power, provided that: (i) no buildings or structures shall be located within seventy-five (75) feet of Spurwink Avenue; (ii) one of the aforementioned accessory structures shall have its location restricted solely to that place where at present is located a stone foundation, and no part of said accessory structure shall be higher than eight (8) feet above either the surface (as measured vertically from any point on the surface within six (6) feet from said foundation on its most easterly side) or the top of said existing stone foundation (as measured vertically from the top of the said existing stone foundation), whichever is less; (iii) no part of any such buildings or structures shall be higher than twenty (20) feet above the surface measured vertically from any point within the area enclosed by said buildings or structures, with the exception of any wind machine which shall be subject to no height limitation in the terms of this Indenture, and with

the exception of the aforementioned accessory structure which shall be restricted in its location and height as provided in 2.A.(ii) above; (iv) no part of any such buildings or structures shall be located within seventy-five (75) feet of the western and southern boundaries of the Property nor within seventy-five (75) feet of the Spurwink River marsh; (v) any and all such buildings and structures permitted hereunder (excepting the accessory structure discussed in 2.A.(ii) above) shall be located within a single one and one-half (1 1/2) acre area hereinafter referred to as the "Development Area" the location of which shall be determined by Grantor, its successors and assigns; and said Development Area (a) shall be within a portion of the northern two-thirds of the Property, (b) shall be deemed to be established upon construction of any of the buildings or structures allowed hereunder, (c) shall be shaped in the form of a square or a square and a rectangle side by side or two (2) rectangles side by side and any and all of these rectangles and square each shall have a minimum width of one hundred (100) feet on the narrowest side, and (d) shall not be relocated, in whole or in part, once the location of said Development Area has been established, unless and upon condition that request for such change be approved in advance and in writing by Grantees.

- B. The right to replace, rebuild, or alter or relocate any or all of the structures allowed hereunder; however, any such relocation shall be within the Development Area.

C. The right to perform ordinary maintenance on the structures allowed hereunder.

D. The right to build and maintain fences, provided that said fences shall be located solely within or around the northern two-thirds of the Property and not within or around the southern one-third of the Property--the latter area meaning to be the entire portion of the Property south and west of the existing unpaved roadway leading from Spurwink Avenue across the Property, meaning to be that area labeled "southern one-third" as shown on said Exhibit A--and said fences shall not obstruct the strip of land along and within the westerly and southerly boundaries of the Property, referred to later herein.

3. No alteration shall be made to the surface of the Property other than that caused by the forces of nature, unless such alteration is approved in advance and in writing by Grantees, provided however, there is retained in Grantor, its successors and assigns, the following rights within the northern two-thirds of the Property:

A. The right to cultivate land for farming or personal gardens.

B. The right to excavate for conservation purposes or in connection with the maintenance, improvement, replacement, rebuilding, alteration or construction either of the structures authorized hereunder or of the water, sewerage and other services related to the residential use of the Property.

C. The right to construct, maintain or rebuild unpaved roadways and foot trails.

D. The right to construct and maintain or rebuild one (1) paved driveway.

4. Without limiting the generality of the foregoing, billboards, residential trailers, mobile homes, bridges or causeways, or aircraft are specifically prohibited on the Property, provided however, there is retained in Grantor, its successors and assigns, the following rights:

A. The right to post the Property to control unauthorized use.

B. The right to erect temporary signs to advertise the Property for sale or for rent.

5. The cutting of standing timber shall not be permitted, provided however, there is retained in Grantor, its successors and assigns, the following rights within the Property:

A. The right to clear and restore forest cover that is damaged or disturbed by the forces of nature.

B. The right to gather, use or remove overmature and dead wood.

C. The right, exercisable only within the northern two-thirds of the Property, to prune or selectively thin trees to provide or maintain views from dwellings.

D. The right to maintain and clear new growth in open fields and meadows.

E. The right to clear forest cover for the purpose of maintaining and repairing the structures permitted hereunder and of constructing the roads, utilities and foot trails permitted hereunder.

6. Any construction, modification, alteration, or reconstruction of any waste disposal system shall be in conformance with the requirements of the Maine Department

of Human Services and Department of Environmental Protection or successor agencies and the Town of Cape Elizabeth and in a manner that will prevent any discharge of untreated waste into salt or fresh waters located on or about the Property.

7. If any part of the instrument shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of said instrument.

The Conservation Easement granted hereunder and the covenants heretofore made are subject to the following rights of Grantor, its successors and assigns, which are expressly reserved hereunder:

Except as expressly limited herein, Grantor reserves for itself, its successors and assigns, all rights as owner of the Property, including the right to use the Property for all purposes not inconsistent with this grant. Grantor, for itself, its successors and assigns, covenants and agrees to pay any and all real estate taxes levied by competent authorities on the Property, or any interest therein, and to relieve Grantees of responsibility for physical maintenance of the Property.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this Conservation Easement shall not only be binding upon Grantor but also its successors and assigns and all other successors to its interests and shall continue as a servitude running in perpetuity with the Property.

This Conservation Easement is subject to a prior Conservation Easement from Grantor to the Town of Cape



its corporate seal by Harold E. Woodsum, Jr., its President,  
thereunto duly authorized, all as of the day and year first  
above written.

MAINE COAST HERITAGE TRUST

By

Harold E. Woodsum, Jr.  
Its President

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

AUGUST 5, 1981

Personally appeared the above named Harold E. Woodsum, Jr.,  
President of said Maine Coast Heritage Trust, and acknowledged  
the above instrument to be his free act and deed in his said  
capacity and the free act and deed of said corporation.

Before me,

Laurence B. Givoll  
Notary Public

MY COMMISSION EXPIRES  
JANUARY 30, 1988

Elizabeth, affecting the southern one-third (1/3) of the Property and a strip along and within the westerly and southerly boundaries of the Property (Spurwink River marsh and Pollack Brook) of recent date, to be recorded in Cumberland Country, Maine, Registry of Deeds.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantees and their successors and assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein shall be construed as "conservation restrictions" as said term is defined in Section 667 of Title 33 of the Revised Statutes of the State of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon Grantor, its successors and assigns, and upon the Property, and shall inure to the benefit of the Grantees and their successors or assigns. Should it be necessary or convenient at any time in the future in connection with any action of Grantees to obtain the agreement or approval of Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at any time, shall be deemed to be the agreement or approval of all the owners of the Property.

In consideration for the rights herein granted, Grantees, by their acceptance hereof, hereby agree to undertake the protection of the Property in accordance with the conditions set forth above. It is the intention of the parties hereto that the terms of this Conservation Easement may be enforced by either of the Grantees, except as otherwise provided herein.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed in its corporate name and sealed with

**CANTERBURY HILLS**



QUITCLAIM DEED WITH COVENANT

~~WARRANT~~

KNOW ALL MEN BY THESE PRESENTS, that LAND/VEST PROPERTIES, INC., a Massachusetts corporation having offices at 76 Main Street, Yarmouth, Maine, 04096 in the County of Cumberland, State of Maine, as General Partner and nominee of Land/Vest Properties 1973 Limited Partnership, a Massachusetts limited partnership having its principal place of business in Boston, Suffolk County, Massachusetts, for consideration paid, grant to TOWN OF CAPE ELIZABETH, a body corporate and politic, existing under the laws of the State of Maine and having a principal place of business in the Town of Cape Elizabeth, County of Cumberland and State of Maine, whose mailing address is Ocean House Road, Cape Elizabeth, Maine, 04107, with quitclaim covenant, the land in said Cape Elizabeth, County of Cumberland, State of Maine, described as follows:

A sixteen and one-half (16.5) foot wide public easement, in perpetuity, for foot traffic only, in common with others, across a certain lot or parcel of land known as Canterbury Hills off Ocean House Road in said Cape Elizabeth, said easement being shown on a certain plan of \_\_\_\_\_ by \_\_\_\_\_ dated \_\_\_\_\_ and recorded on \_\_\_\_\_ in the Cumberland County Registry of Deeds in Book \_\_\_\_\_ at Page \_\_\_\_\_ and being shown on said Plan and denoted thereon as "Pedestrian Easement Deeded or to be Deeded to the Town of Cape Elizabeth".

This easement is limited to the right to pass and repass on foot, skis and snowshoes and does not include the right to pass or repass with vehicles of any type or on horseback. The easement granted herein permits establishment and maintenance of a footpath or trail only to the minimum extent necessary to exercise the easement granted herein but not the construction or placement of any structures whatsoever. In any case, no trees over 10" D.B.H. shall be cut unless they are dead or are a safety hazard.

Neither the Grantor nor its successors and assigns warrants, guarantees or undertakes maintenance or repair of any footpath or trail nor accepts any duty of care to keep said recreational trail safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous condition, use, structure or activity on such premises to persons entering for recreational purposes, nor extend any assurance that the premises are safe for any such purposes, nor make any person entering upon said trail an invitee or licensee to whom a duty of care is owed, nor assume responsibility for nor incur liability for any injury to person or property caused by any act of any person, or any other cause.

The Grantee, by acceptance of this deed, agrees to insure that members of the public making use of this easement do not either exceed or misuse the rights of use granted by this easement.

IN WITNESS WHEREOF, the said LAND/VEST PROPERTIES, INC.,  
as General Partner and nominee of Land/Vest Properties 1973  
Limited partnership, has caused this instrument to be sealed  
with its corporate seal and signed in its corporate name by  
KENNETH WOODSUM, its Vice President, thereunto duly authorized,  
this       day of                      in the year one thousand nine  
hundred and eighty-two.

SIGNED, SEALED AND DELIVERED    LAND/VEST PROPERTIES, INC.  
IN PRESENCE OF                      as General Partner and nominee  
   of Land/Vest Properties 1973  
   Limited Partnership

By \_\_\_\_\_  
Kenneth Woodsum, Vice President

(Corporate Seal)

STATE OF MAINE  
CUMBERLAND, ss

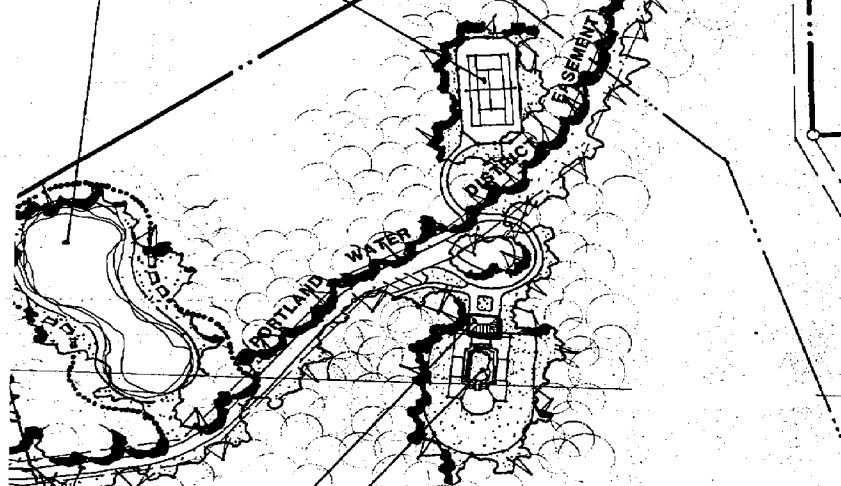
, 1982

Then personally appeared the above-named KENNETH WOODSUM,  
VICE PRESIDENT OF SAID CORPORATION, and acknowledged the fore-  
going instrument to be his free act and deed in his said  
capacity, and the free act and deed of said corporation as  
General Partner and nominee of Land/Vest Properties 1973 Limited  
Partnership.

Before me,

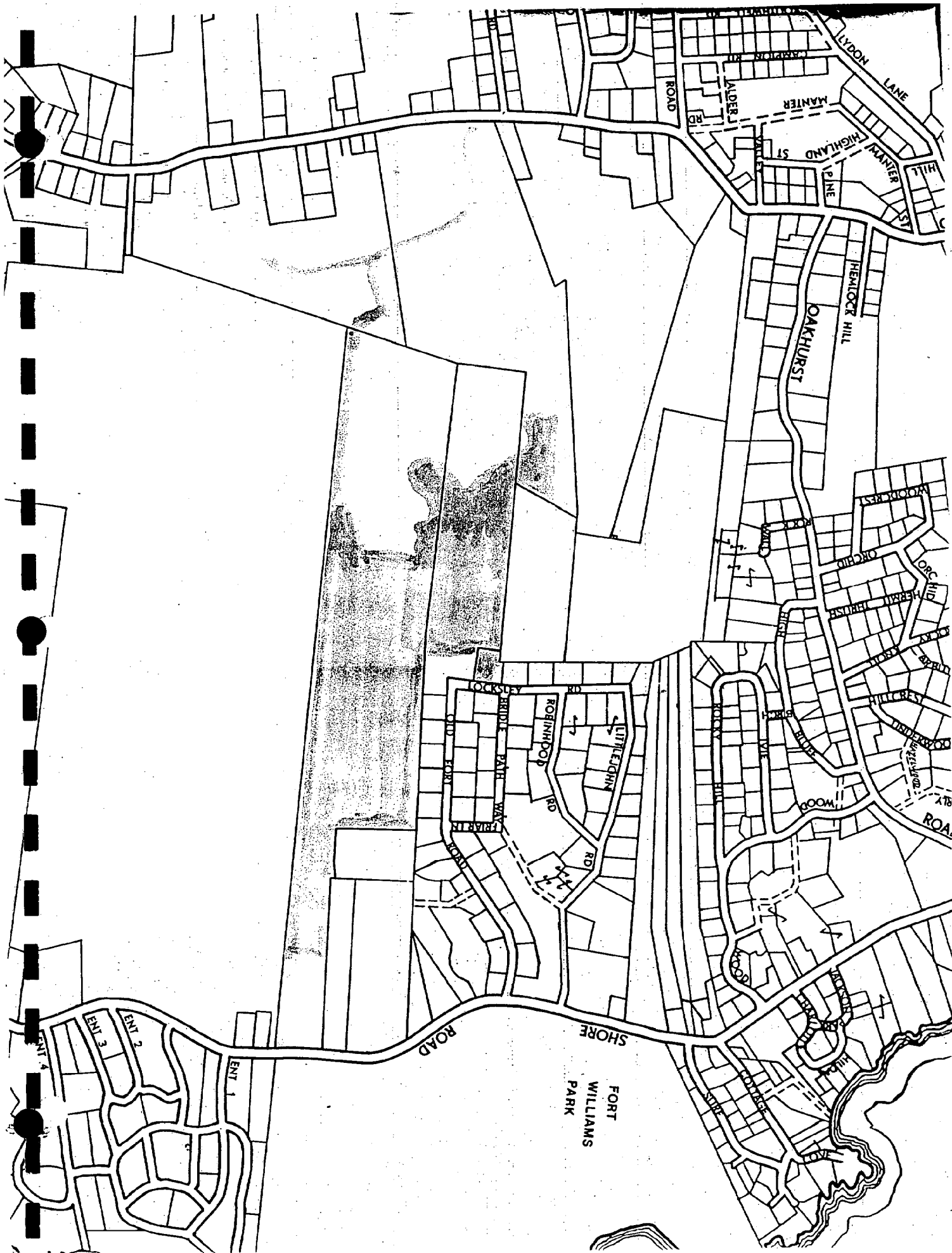
\_\_\_\_\_  
Justice of the Peace  
Attorney at Law  
Notary Public

SKATING POND  
TENNIS COURT



BOUNDARY LINE FOR AREA SUBJECT TO DEVELOPMENT  
(REFER TO SUBDIVISION AND CONDOMINIUM  
PLAT FOR SPECIFIC INFORMATION)

PEDESTRIAN EASEMENT DECEDED  
TO THE TOWN OF CAPE ELIZABETH





STONEGATE

# IBIS CORPORATION

594 Congress Street, Portland, Maine 04101/207-774-9210

December 18, 1986

Mr. Michael McGovern, Town Manager  
Town of Cape Elizabeth  
320 Ocean House Road  
Cape Elizabeth, Maine 04107

CONSERVATION LAND GRANT  
STONEGATE SUBDIVISION

Dear Mike:

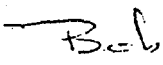
Enclosed please find the proposed Warranty Deed from Stonegate Associates to the Town of Cape Elizabeth for the common open space at Stonegate.

If this document meets your approval, we would like to execute it prior to December 31, 1986. I have taken the liberty of forwarding copies of this proposed deed to Tom Leahy and Peter Rand for their examination.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

STONEGATE ASSOCIATES

  
R. H. Taylor, Jr.

mss

att.

cc: Walter E. Webber

T. Leahy

P. Rand

WARRANTY DEED

FROM STONEGATE ASSOCIATES TO THE TOWN OF CAPE ELIZABETH

W I T N E S S E T H :

WHEREAS, STONEGATE ASSOCIATES, a Maine Limited Partnership with a principal place of business at Portland, in the County of Cumberland and State of Maine (hereinafter referred to as the Grantor), holds title to certain real property, which is further described in Exhibit A attached hereto, having significant natural, scientific, educational, scenic and asethetic value in its present state as a natural area which has not been subjected to residential development and which property provides scenic enjoyment to the general public; and

WHEREAS, the TOWN OF CAPE ELIZABETH, a municipal body, corporate and politic, having its principal office at Ocean House Road, Cape Elizabeth, in the County of Cumberland and State of Maine (hereinafter referred to as Grantee), has determined that for the preservation of public, recreational and educational opportunities and preservation of the open space and scenic values of the Town of Cape Elizabeth, it is in the public interest to acquire the property described in Exhibit A;

WHEREAS, Grantor has determined that it desires to make a gift of the property described in Exhibit A to Grantee exclusively for public purposes, said property to be preserved for outdoor recreation and education of the general public; and

WHEREAS, Grantee at a council meeting held on December 8, 1986, by vote of its Legislative Body, was authorized to accept a deed of the property described in Exhibit A for the purposes set forth herein.

NOW THEREFORE, the Grantor, for and in consideration of the facts above recited does hereby GIVE, GRANT AND CONVEY to the Grantee, its successors and assigns, a certain lot or parcel of land situated in said Cape Elizabeth, County of Cumberland and State of Maine, and being more particularly described in Exhibit A attached hereto and incorporated herein.

The Grantor herein also agrees to install an overflow sill and flow guage in the location shown on the plan referred to in Exhibit A, and further agrees to construct and lay out footpaths on the property.

This conveyance is subject to the following covenants which shall run with and bind the property herein described in perpetuity:

1. The property shall be used for conservation and recreational purposes.

2. No structures of any kind, temporary or permanent, shall be located on the property, excepting the existing

on the property, provided, however, the Grantee, its successors and assigns, may clear and restore forest cover that is damaged or disturbed by the forces of nature, and may gather, use or remove dead wood.

All such covenants shall be construed in a manner consistent with Section 170(h) of the Internal Revenue Code of 1986.

This conveyance is also subject to any easements, notes and conditions appearing on the aforementioned Plan or of record in the Cumberland County Registry of Deeds.

TO HAVE AND TO HOLD the aforegranted premises with all the privileges and appurtenances thereof, to the said TOWN OF CAPE ELIZABETH, and its successors and assigns, to them and their use and behoof forever.

AND, the Grantor does covenant with the said Grantee, as aforesaid, that it is lawfully seized in fee of the premises, that they are free of all incumbrances, except as noted above, that it has good right to sell and convey the same to the said Grantee to hold as aforesaid and that it and its successors shall and will WARRANT AND DEFEND the same to the said Grantee, its successors and assigns, forever, against the lawful claims and demands of all persons.

IN WITNESS WHEREOF, the said STONEGATE ASSOCIATES, has caused this instrument to be signed by Robert A. Taylor, Jr., its General Partner, thereunto duly authorized this

unoccupied log-cabin, which shall not be improved or repaired. The Grantee shall, however, have the right to post, maintain and replace signs on the property that prohibit unauthorized use and regulates permitted uses.

3. No alteration shall be made to the surface of the property other than that caused by the forces of nature. The Grantee shall, however, have the right to grant easements for the installation and maintenance of ~~above-ground~~ and below-ground utilities, provided the holder or holders of such easements agree that any land and vegetation disturbed by the installation of utilities be thereafter restored, as nearly as possible, to its prior undisturbed state.

4. No commercial, residential, industrial, quarrying or mining activities shall be permitted on the property.

5. Without limiting the generality of the foregoing, billboards, trailers, mobile homes, prominent antennae for telecommunications and radar and use of property as an aircraft landing site, the last except in an emergency, are specifically prohibited on the property.

6. No motorized vehicles of any sort, including without limitation, automobiles, trucks, off-road vehicles, snow-mobles, motorcycles, and recreational vehicles, shall be permitted on the property, except in the case of emergency for fire control or prevention and for forest restoration activities and the construction, operation or repair of the overflow sill, flow gauge, footpaths and utilities permitted or required hereunder.

7. The cutting of standing timber shall not be permitted

day of December, 1986.

Witness:

STONEGATE ASSOCIATES

BY: \_\_\_\_\_

Robert A. Taylor, Jr.  
Its General Partner

State of Maine  
Cumberland, ss.

December , 1986

Personally appeared the above-named Robert H. Taylor, Jr., General Partner of said Stonegate Associates, as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Stonegate Associates.

Before me, \_\_\_\_\_

, Notary Public

The TOWN OF CAPE ELIZABETH, Grantee as aforesaid, hereby accepts the foregoing conveyance.

TOWN OF CAPE ELIZABETH

BY: \_\_\_\_\_

Its

State of Maine  
Cumberland, ss.

At Cape Elizabeth, Maine, this \_\_\_\_\_ day of December, 1986, personally appeared the above-named \_\_\_\_\_ of said Town of Cape Elizabeth, and acknowledged the execution of the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said Town of Cape Elizabeth.

Before me, \_\_\_\_\_

, Notary Public

### EXHIBIT A

A certain lot or parcel of land situated in the Town of Cape Elizabeth in the County of Cumberland and State of Maine and being more particularly described as follows:

Beginning at a point on the southerly side of Stonegate Road as shown on a plan entitled "Subdivision Plat, Stonegate, Cape Elizabeth, Maine" by Owen Haskell, Inc. revised August 6, 1986 and recorded in the Cumberland County Registry of Deeds in Plan Book 158, Pages 4 and 5. Said point also being the northernmost point of lot 49 as shown on said plan. Thence, south 23° 1' 45" east 85.8 feet to an iron rod; thence, south 83° 20' 46" east 94.8 feet to a monument; thence, continuing along the same course 274.82 feet to an iron rod; thence, south 85° 18' 1" east 1,667.5 feet to an iron rod; thence, south 82° 17' 1" east 1,335.7 feet to an iron rod; thence, north 3° 5' 7" east 201.56 feet to an iron rod; thence, south 83° 46' 37" east 514.3 feet to an iron rod located on the westerly side of the Shore Road; thence, northerly along said Shore Road 20.02 feet to an iron rod; thence, north 83° 46' 37" west 905.39 feet to an iron rod; thence, north 8° 41' 33" east 40.35 feet to an iron rod; thence, south 73° 33' 31" west 95 feet to an iron rod; thence, north 81° 18' 29" west 135 feet to an iron rod; thence, north 42° 38' 27" west 32.01 feet to an iron rod; thence, north 8° 41' 31" east 418.25 feet to an iron rod and a stone wall; thence, north 84° 34" west along said stone wall 526.17 feet to an iron rod; thence, north 83° 44' 27" west 258.27 feet to an iron rod; thence, north 83° 53' 41" west 252.5 feet to an iron rod; thence, north 13° 27' 19" east 178.04 feet to an iron rod; thence, north 83° 8' 22" east 154.32 feet to an iron rod located on the westerly side of Locksley Road so-called; thence, north 11° 28' 18" east along said Locksley Road 52.82 feet to an iron rod; thence, north 78° 31' 32" west 144.92 feet to an iron rod; thence, north 11° 28' 18" east 92.64 feet to an iron rod; thence, north 82° 52' 55" west 705.05 feet to an iron rod; thence, north 25° 4' 52" east 224.55 feet to a point marked by a 6-inch maple tree; thence, north 87° 55' 8" west 651.35 feet to an iron rod; thence, south 2° 4' 52" west 80 feet to an iron rod; thence, north 63° 4' 52" east 95 feet to an iron rod; thence, south 71° 55' 8" east 25 feet to an iron rod; thence, south 9° 34' 52" west 105 feet to an iron rod; thence, south 38° 4' 41" east 260 feet to an iron rod; thence, south 39° 58' 30" west 135 feet to an iron rod; thence, south 45° 53' 46" west 65 feet to an iron rod; thence, south 3° 17' 57" west 30 feet to an iron rod; thence, continuing along the same course 30 feet to another iron rod; thence, south 24° 21' 14" east 50 feet to an iron rod; thence, north 62° 35' 28" east 59.65 feet



to an iron rod; thence, north 53° 12' east 60 feet to an iron rod; thence, north 87° 12' east 50 feet to an iron rod; thence, south 18° 48' east 100 feet to an iron rod; thence, south 38° 48' east 45 feet to an iron rod; thence, south 88° 48' east 222 feet to an iron rod; thence, south 4° 12' west 187 feet to an iron rod; thence, continuing on the same course 170 feet to an iron rod; thence, south 64° 4' 27" west 194.29 feet to an iron rod; thence, continuing along the same course 200 feet to an iron rod; thence, north 85° 18' 1" west 145 feet to an iron rod; thence, continuing along the same course 150 feet to an iron rod; thence, still continuing along the same course 115 feet to an iron rod; thence, continuing along the same course 36.64 feet to another iron rod; thence, continuing the same course 115 feet to another iron rod; thence, north 83° 20' 46" west 200 feet to an iron rod; thence, north 23° 1' 45" west 72.91 feet to an iron rod located on the westerly side of said Stonegate Road; thence, south 58° 24' west along said Stonegate Road 30.37 feet to the point of beginning, and being the area shown as "Common Open Space" on said plan.

**BRYCO**

(101)  
Quitclaim Deed  
(With Covenant)

EXHIBIT A

Know all Men by these Presents,

That ARNOLD Y. BRYNES of Scarborough, County of Cumberland and State of Maine and GARY S. BRYNES

in consideration of One (\$1.00) Dollar and other good and valuable consideration

paid by BRYCO, INC., a Maine corporation with a principal place of business in Portland, County of Cumberland and State of Maine

~~and whose mailing address is~~

the receipt whereof we do hereby acknowledge, do hereby remise, release, bargain, sell and convey and forever quit-claim unto the said Bryco, Inc., its successors

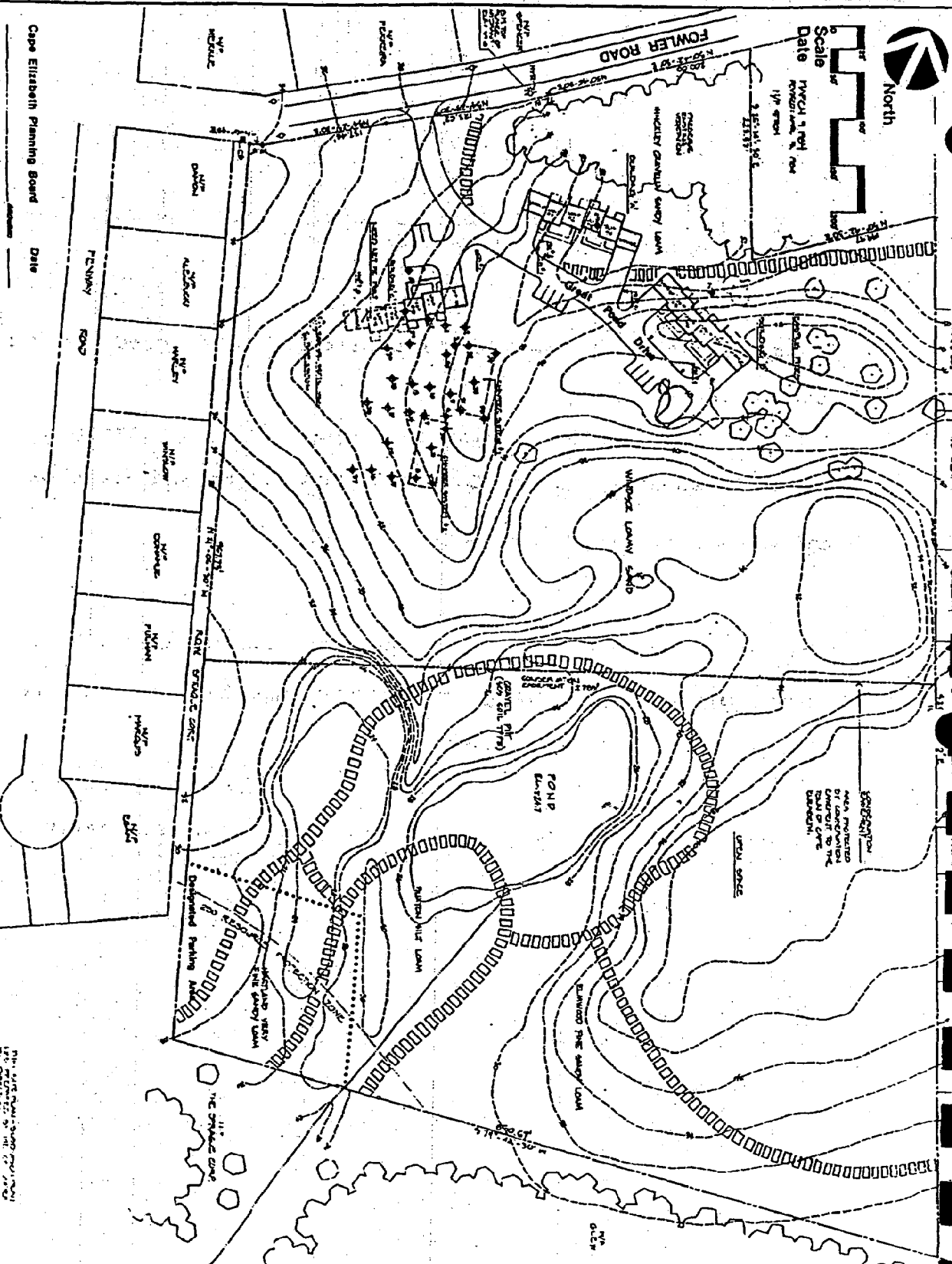
~~heirs~~ and assigns forever,

a certain lot or parcel of land situated on the southerly side of Fowler Road in Cape Elizabeth, County of Cumberland and State of Maine, containing nineteen (19) acres, more or less, and being all of the land situated southerly of Fowler Road in said Cape Elizabeth which was owned by the late Eva F. Brown at the date of her death EXCEPT for the residence of the late Eva F. Brown and the one (1) acre of land on which it was located which has previously been conveyed by the said Helen B. Parks, Executrix of the Will of Eva F. Brown, to Hubert W. Strom, et al. by deed duly recorded in the Cumberland County Registry of Deeds.

Being the same premises conveyed to the Grantors herein by quit-claim deed with covenant from Sun Savings and Loan Association dated December 14, 1982 and recorded in said Registry of Deeds in Book 5081, Page 33.

Recorded in the Cumberland County Registry of Deeds, April 19, 1984, in Book \_\_\_\_\_, Page \_\_\_\_\_.

11/10/2004



NOT PROTECTED  
BY CONVENTION  
OF COPYRIGHT TO THE  
TOWN OF CANTON  
BERNE.

OPEN ENCE

ELMWOOD PARK

## Notes

- [illegible]

### Legend

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EXHIBIT

**SITE PLAN** **SUBDIVISION PLAN**

# GREAT P CONDOMIN

## Cape Elizat

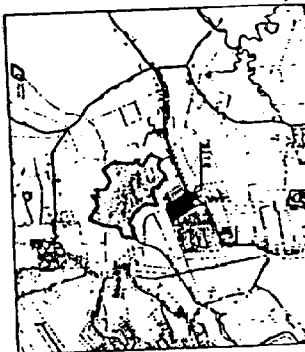
Developer Bryco, Jr

## Portland

**Landscape Architects**  
**Mitchell**  
**386 For**

Portland

DATE: \_\_\_\_\_  
TIME: \_\_\_\_\_  
BY: \_\_\_\_\_



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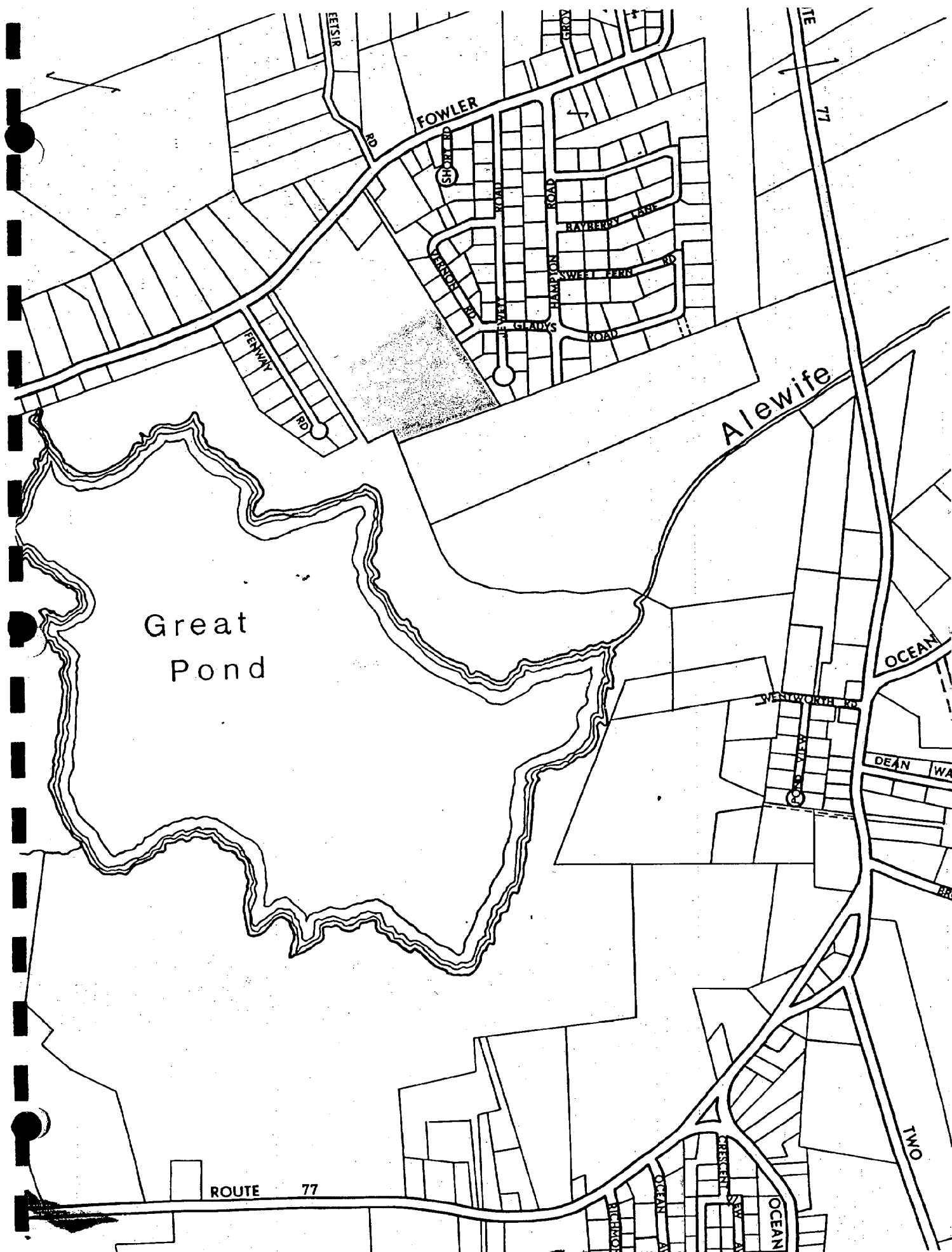
EXHIBIT B

# GREAT POND CONDOMINIUMS

## Cape Elizabeth, Maine

**Bryco, Inc.**  
813 Washington Ave.

**Mitchell-DeVan Assoc.**  
386 Fore Street  
Portland, Maine



COPY FOR YOUR  
INFORMATION

CONSERVATION EASEMENT  
FROM BRYCO, INC., TO THE TOWN OF CAPE ELIZABETH

THIS INDENTURE made this 25<sup>th</sup> day of October, 1984  
by and between BRYCO, INC., a Maine Corporation with a principal  
place of business in Portland, Maine, hereinafter referred to as  
the Grantor, and the Town of Cape Elizabeth, a governmental body  
having its principal office at Ocean House Road, Cape Elizabeth,  
Cumberland County, Maine, hereinafter referred to as the Grantee,

W I T N E S S E T H:

WHEREAS, by Act of the State of Maine Legislature, Title 33,  
Maine Revised Statutes, 1964, as amended, Sections 667 and 668,  
conservation restrictions in the form of conservation easements  
were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Maine  
Revised Statutes, 1964, as amended, (Title 30, Sections 3851 and  
3801) provides for the establishment of Conservation Commissions  
and authorizes such Commissions to receive gifts, and to acquire  
land and conservation easements in the name of the municipality;  
and

WHEREAS, Grantee at a Council Meeting held on April 26, 1971  
by vote of its Legislative Body, established the Town of Cape  
Elizabeth Conservation Commission; and

WHEREAS, Grantee has determined that for the preservation of  
public recreational and educational opportunities and  
preservation of the open space and scenic values of the Town of  
Cape Elizabeth, it is in the public interest to acquire a  
Conservation Easement over the Protected Property hereinafter  
described; and

WHEREAS, Grantee at a Council Meeting held on  
1984, by vote of its Legislative Body, was authorized to accept a  
Conservation Easement affecting the Protected Property  
hereinafter described, for the purposes set forth herein; and

WHEREAS, the Grantor holds title to certain real property  
(hereinafter called the "Protected Property") under a certain  
deed from Arnold Y. Brynes, et al. dated April 12, 1984 and  
recorded in Cumberland County Registry of Deeds, Book 6429, Page 262,  
and which is described as follows:

See attached Exhibit A.

WHEREAS, the Protected Property has significant natural,  
scientific, educational, scenic and aesthetic value in its  
present state as a natural area which has not been subjected to  
residential development and which Protected Property provides  
scenic enjoyment to the general public; and

WHEREAS, the Protected Property is a scenic and open tract of land in immediate proximity to Great Pond, said Pond being a significant educational, recreational, scenic and ecological resource to the general public and to the Grantee; and

WHEREAS, residential or commercial development of the Protected Property would have a deleterious effect upon the general public's scenic enjoyment of the Protected Property and Great Pond; and

WHEREAS, excessive residential or other development of the Protected Property would have a deleterious effect on the ecology of Great Pond as habitat for indigenous fauna and flora; and

WHEREAS, a primary purpose of the Grantee is to preserve and conserve land areas for the recreational, educational and aesthetic enjoyment of the general public by physical and visual access;

WHEREAS, the Grantor and the Grantee recognize the uniqueness of the Protected Property as constituting an access by the general public to Great Pond and also recognize the Protected Property as benefitting the scenic quality and the public's recreational enjoyment of Great Pond and have the common purpose of conserving the natural values of and public access to the Protected Property and Great Pond,

NOW THEREFORE, the Grantor and Grantee, for and in consideration of the facts above recited and of the covenants herein contained, hereby agree as follows:

Section 1. Grant of Conservation Easement. As an absolute and unconditional gift, Grantor does hereby grant to the Grantee, its successors and assigns, forever and in perpetuity for the benefit of the general public and the Grantee, a Conservation Easement in, to, on, over and across the Protected Property consisting of the following:

(A) The right of the Grantee and the general public to view the Protected Property in its present substantially natural, scenic, open and wooded condition;

(B) The right of Grantee and the general public to enter and transit Protected Property for quiet recreational enjoyment; such right shall not include entrance by and operation of motorized vehicles on the Protected Property by the Grantee or the general public except in the designated parking area. Attached hereto marked Exhibit B and made a part hereof is a map indicating (a) the Protected Property, (b) location of the Abutting Property and (c) location of the designated parking area.

(C) The right of the Grantee, its successors and assigns, to plant shrubs and the right to plant trees on the Protected Property provided the location of said trees is approved in advance by the Grantor, his successors or assigns.



(D) The Right of the Grantee and its successors and assigns to place boulders on the Protected Property to regulate motorized vehicular access by the general public.

(E) The right of the Grantee and its successors and assigns to construct and maintain foot trails.

(F) The right of the Grantee and its successors and assigns to enter and inspect the Protected Property.

(G) The right of the Grantee and its successors and assigns to enforce by proceedings at law or in equity the covenants hereinafter set forth.

Section 2. Covenants. In furtherance of the foregoing affirmative rights, the Grantor makes the following covenants on behalf of itself, its successors and assigns, which covenants shall run with and bind the Protected Property in perpetuity:

(A) The Protected Property shall be used for conservation and recreational purposes only, except for other purposes specifically allowed in this Conservation Easement. No commercial, residential, industrial, quarrying or mining activities shall be permitted on the Protected Property except for:

1. Residential uses auxiliary to residential structures located now or in the future on the Abutting Property, provided said excepted activity shall be conducted in a manner that will not be destructive to the open, pastoral character of the Protected Property and that it is consistent with the conservation and recreational uses of the Protected Property permitted herein.

(B) As present there are no structures of any kind on the Protected Property. No structures of any kind, temporary or permanent, shall be located on the Protected Property, except there is retained in the Grantor, its successors and assigns, the following rights:

1. The right to post small signs on the Protected Property that prohibit unauthorized use or regulate permitted use.

2. The right to post signs on the Protected Property advertising it for sale or rent.

3. The right to maintain and replace said signs.

(C) No alteration shall be made to the surface of the Protected Property other than that caused by the forces of nature, unless such alteration is approved in advance and in writing by the Grantee, its successors and assigns, provided however, there is retained in the Grantor, its successors and assigns the following rights:

1. The right to excavate in connection with the installation, maintenance, improvement, alteration or replacement of water, sewerage and other services related to the residential use of the Abutting Property, provided such activity is performed in conformance with all local, state and federal laws and regulations governing such activity and done in a manner that will prevent discharge of any waste into salt or fresh water located in or about the Protected Property that will at all adversely affect the purity of said waters.

2. The right to abolish the existing road or any part thereof, said road being that which begins at the northern boundary of the Protected Property and proceeds in a southerly direction ending at an abandoned gravel pit located on the Protected Property.

3. The right to construct and maintain foot trails.

(D) Without limiting the generality of the foregoing, billboards, trailers, mobile homes, prominent antennae for telecommunications and radar, and use of the Protected Property as an aircraft lading site, the last except in an emergency, are specifically prohibited on the Protected Property.

(E) The cutting of standing timber shall not be permitted on the Protected Property, provided however, there is retained in the Grantor, its successors and assigns, the following rights:

1. The right to clear and restore forest cover that is damaged or disturbed by the forces of nature.

2. The right to gather, use or remove dead wood.

3. The right to prune or selectively thin trees to provide or maintain views from dwellings located on the Abutting Property.

4. The right to clear new growth in open fields.

5. The right to clear forest cover for the purpose of constructing and maintaining the utilities permitted hereunder.

Section 3. Protection of Easement Terms. If uncertainty should arise in the interpretation of this Conservation Easement, judgment should be made in favor of conserving the Protected Property in its natural and scenic state.

Section 4. Savings Clause. If any part of this instrument shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of this instrument.

Section 5. Reservation of Rights for Grantor. Except as expressly limited herein, Grantor reserves for itself and its successors and assigns, all rights as owner of the Protected Property, including the right to use the Protected Property for all purposes not inconsistent with this grant, and the right to dispose of the same either by sale, gift, devise, or in connection with the creation of a condominium of which the Protected Property is a part; provided however, that any transferee of the Protected Property shall take subject to all of the covenants and restrictions set forth herein.

Section 6. Payment of Taxes. Grantor, for itself, successors and assigns, covenants and agrees to pay any and all real estate taxes levied by competent authorities on the Protected Property, or any interest therein.

Section 7. Compliance with Easement. The Grantee may make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein. In connection with such efforts, Grantee may make periodic inspections of all or any portion of the Protected Property, and for such inspection and enforcement purposes the Grantee shall have the right of reasonable access to all of the Protected Property. In the event that Grantee becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Grantee shall give notice to Grantor of such event or circumstance or non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be demanded by Grantee within thirty (30) days after receipt of notice shall entitle Grantee to bring an action in a court of competent jurisdiction to enforce the terms of this Conservation Easement and to recover any damage arising from such non-compliance. Such damages, when recovered, may be applied by Grantee to corrective action on the Protected Property, if necessary, and Grantee is hereby granted a right of access to the Protected Property for such purposes. If such Court determines that Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including court costs and reasonable attorneys fees, in addition to any other payments ordered by such court.

Section 8. Binding Effect. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this Conservation Easement shall not only be binding upon Grantor but also its assigns and all other successors to its interests and shall continue as a servitude running in perpetuity with the Protected Property. The Grantor, its assigns and successors, agree that the terms, conditions, restrictions, and purposes of

this grant will be inserted in any subsequent conveyance of any interest in said property.

Section 9. Physical Maintenance of the Protected Property. By acceptance of this Conservation Easement, Grantee, its successors and assigns, relieves Grantor of responsibility for physical maintenance of the Protected Property.

Section 10. Grantor's Relief from Liability. Grantor, its heirs and assigns, does not create any duty of care to keep the Protected Property safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous condition, use, structure or activity on such premises to persons entering for recreational purposes, nor extend any assurance that the premises are safe for any such purposes, nor make any person entering upon the Protected Property an invitee or licensee to whom a duty of care is owed, nor assume responsibility for or incur liability for any injury to person or property caused by any act of any person, or any other cause, and it is expressly intended that all activities of Grantee and of the general public entering upon the Protected Property be subject to the limited liability provisions of Title 14, Maine Revised Statutes, 1964, as amended, Section 159-A.

Section 11. Subsequent Transferees. By acceptance of this Conservation Easement, Grantee, its successors and assigns, covenants and agrees, as real covenants running with the land in perpetuity, not as conditions to this Conservation Easement or as restraints on alienability, (1) that it will hold this conservation Easement in perpetuity for the purposes for which Grantee, its successors and assigns, were organized; (2) that it will not transfer said Conservation Easement except to an entity able to enforce the rights granted in this Conservation Easement, which entity shall also have purposes similar to that of Grantee and which encompass the purposes set forth in this Conservation Easement; (3) that any such transferee shall satisfy the requirements of Section 170(h)(3) of the Internal Revenue Code of 1954, as amended (hereinafter "the Code") and shall be a charitable organization described in Section 501(c)(3) of the Code and which is publicly supported within the meaning of Section 170(b)(1)(A)(vi) of the Code or Paragraph (2) of Section 509(a) of the Code; and such transferee shall not be a private foundation as defined in Section 509 of the Code; and (4) that it is familiar with the generally existing conditions on the Protected Property, will document the conditions on and monitor the Protected Property at periodic intervals reasonably often hereafter and will make good faith efforts to enforce the provisions hereof. Wherever the term "Grantee" appears in this Conservation Easement, including the foregoing covenants, it shall also refer, as appropriate, to any transferee, assignee, or successor in interest of the Grantee to this Conservation Easement.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee and its successors and assigns forever.

IN WITNESS WHEREOF, the said Bryco, Inc. has caused this instrument to be signed and sealed by Arnold Y. Brynes, its Treasurer, thereunto duly authorized this \_\_\_\_\_ day of October, 1984.

Signed, Sealed and Delivered  
in the presence of

BRYCO, INC.

Barbara H. Penley

By: Arnold Y. Brynes  
Arnold Y. Brynes  
Treasurer

TOWN OF CAPE ELIZABETH

By: \_\_\_\_\_

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

At Portland, this 29<sup>th</sup> day of October, 1984, personally appeared the above-named Arnold Y. Brynes and acknowledged the execution of the foregoing instrument to be their free act and deed in their said capacity and the free and authorized act and deed of BRYCO, INC.

Before me, Barbara H. Penley

Notary Public

BARBARA H. PENLEY  
NOTARY PUBLIC, MAINE

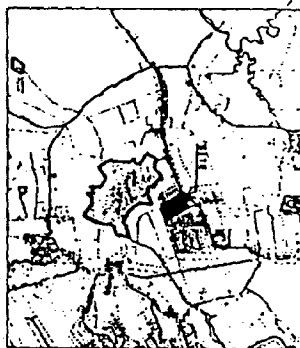
MY COMMISSION EXPIRES DECEMBER 31, 1985

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

At \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 1984, personally appeared the above-named \_\_\_\_\_ and he acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the Town of Cape Elizabeth.

Before me, \_\_\_\_\_

Notary Public



## Cape Elizabeth, Maine

**Bryco, Inc.**  
813 Washington Ave.

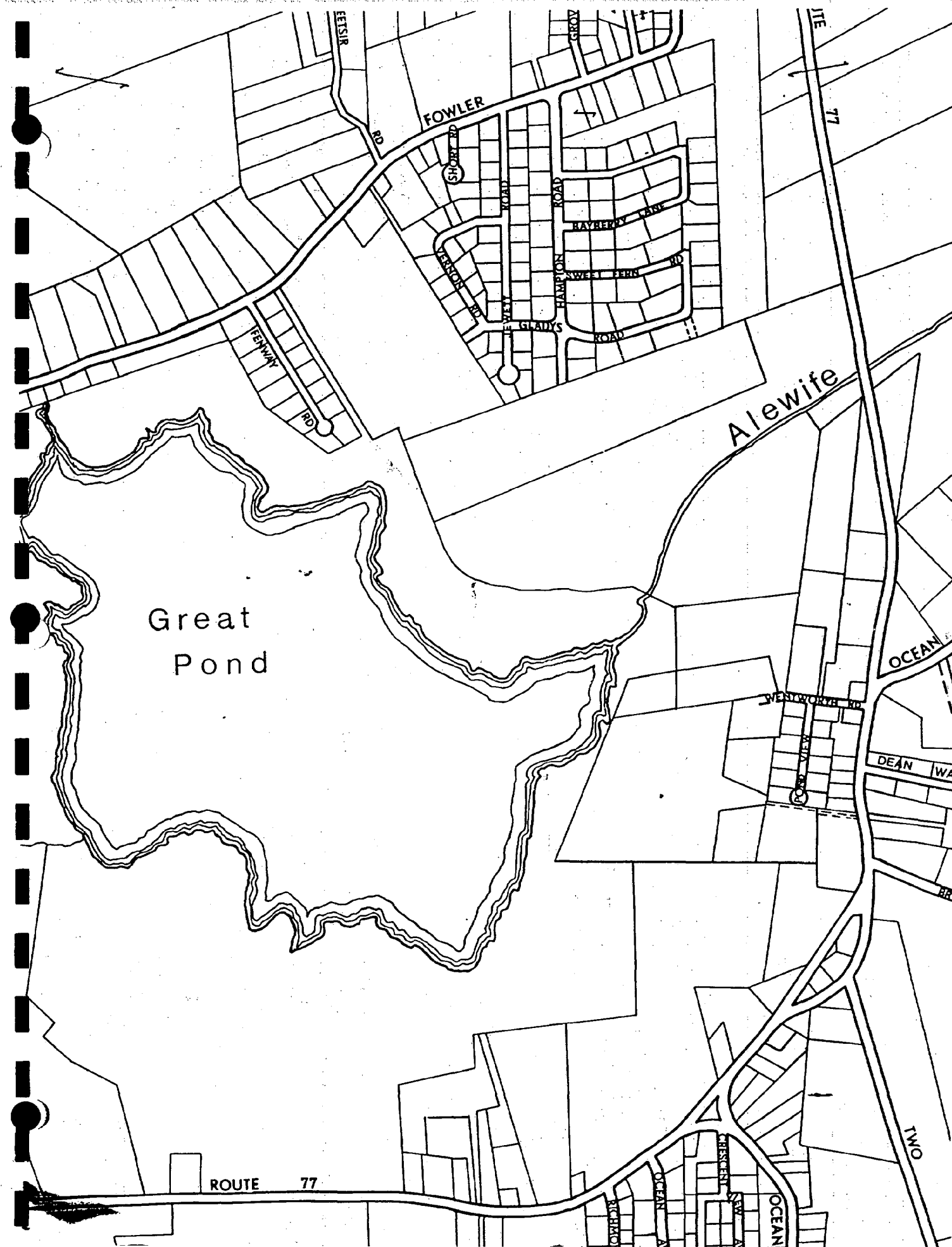
**Portland, Maine**

**Mitchell-DeVan Assoc.**  
386 Fore Street  
Portland, Maine

[illegible][illegible]

EXHIBIT B

**SPRAGUE PEDESTRIAN**





MONAGHAN, LEAHY, HOCHADEL & LIBBY

ATTORNEYS AT LAW

THOMAS F. MONAGHAN  
THOMAS G. LEAHY  
JOSEPH M. HOCHADEL  
KEVIN G. LIBBY  
DEBORAH J. ROSS  
CHRISTOPHER C. DINAN

95 EXCHANGE STREET  
P. O. BOX 4863 DTS  
PORTLAND, MAINE  
04112-4863  
207-774-3906

April 19, 1983

Charles R. Oestreicher, Esq.  
Verrill & Dana  
Two Canal Plaza  
P.O. Box 586  
Portland, Maine 04112-0586

Re: Sprague Corporation Pedestrian Easement to Town of Cape Elizabeth

Dear Chuck:

I have reviewed your April 12, 1983 draft of a proposed easement by the Sprague Corporation to the Inhabitants to the Town of Cape Elizabeth. I see you have addressed the concerns raised by Peter W. Rand, M.D., Chairman of the Cape Elizabeth Conservation Commission.

Appearing in your second draft of the easement is a clause by which the Town shall hold harmless and indemnify the Sprague Corporation from any claims arising from the use of the pathway, excepting only those arising out of the negligence of the Sprague Corporation. As I have previously maintained in respect to offers of easements from other subdividers, the Town cannot insure the grantor of the easement. I would suggest the following language which has been found acceptable in the past:

The Grantor (Sprague Corporation), its successors and assigns, do not warrant the condition of or undertake to maintain or repair the rights of way conveyed hereby, and expressly disclaim any duty to keep the rights of way free from any dangers to the general public, or to give warning of any hazardous condition upon said rights of way. The Grantor expressly disclaims the assumption of any responsibility for, or liability for, any injury to any person or property that may occur upon the rights of way.

Obviously, my attempt here is to provide the Sprague Corporation a disclaimer of any responsibility and liability in regard to the pathways, but without the Town of Cape Elizabeth correspondingly picking up such responsibility or liability. To the extent use is made by the general public of the pathways pursuant to the easement and not by other rights that may presently exist, the grant of the easement would simply leave up

to then existing tort law whether the Town would be liable to any third parties.

After you have had a chance to review this, I would appreciate your thoughts.

Very truly yours,

Thomas G. Leahy

TGL/w

cc: Mr. Thomas Summers

Peter W. Rand, M.D. ✓

Chairman of C.E. Conservation Commission

QUITCLAIM DEED

With Covenant

Corporate Grantor

**Know all Men by these Presents,**

**That** THE SPRAGUE CORPORATION

a Corporation organized and existing under the laws of the State of Maine

and having a place of business at Cape Elizabeth

in the County of Cumberland and State of Maine

in consideration of One Dollar and Other Valuable Considerations,

paid by INHABITANTS OF THE TOWN OF CAPE ELIZABETH, a municipal body corporate and politic, existing under the laws of the State of Maine,

whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine 04107

the receipt whereof it does hereby acknowledge, does hereby remise, release, bargain, sell and convey,

and forever quitclaim unto the said INHABITANTS OF THE TOWN OF CAPE

ELIZABETH, their successors,

heirs and assigns forever,

Hereby granting to the Grantee, a pedestrian right of way in common with the Grantor herein, its successors and assigns, over the pathways as now travelled along the easterly shore of the Great Pond, so-called, and access to said Great Pond from said pathways as now and historically gained at its northeasterly shore, in the Town of Cape Elizabeth, County of Cumberland and State of Maine, from Route 77 to the Fowler Road, insofar as the Grantor herein has the right to convey the same.

Together with rights in common with the Grantor, its successors and assigns, to reach the Grantor's land from Route 77, over land of A. J. Levenson as set forth in a deed from Great Pond Club to The Sprague Corporation dated August 28, 1928 and recorded in the Cumberland County Registry of Deeds in Book 1303, Page 40.

No motorized or self-propelled vehicles or snowmobiles of any kind shall be permitted to use said pathways as it is intended for pedestrian foot traffic only. Excepted from this limitation or restriction are official governmental vehicles for the purpose of repair and maintenance of said pathways, public safety or other proper public purpose.

in consideration of One Dollar and Other Valuable Considerations,

paid by INHABITANTS OF THE TOWN OF CAPE ELIZABETH, a municipal body corporate and politic, existing under the laws of the State of Maine,

whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine 04107

the receipt whereof it does hereby acknowledge, does hereby remise, release, bargain, sell and convey,

and forever quitclaim unto the said INHABITANTS OF THE TOWN OF CAPE

ELIZABETH, their successors,

heirs and assigns forever,

Hereby granting to the Grantee, a pedestrian right of way in common with the Grantor herein, its successors and assigns, over the pathways as now travelled along the easterly shore of the Great Pond, so-called, and access to said Great Pond from said pathways as now and historically gained at its northeasterly shore, in the Town of Cape Elizabeth, County of Cumberland and State of Maine, from Route 77 to the Fowler Road, insofar as the Grantor herein has the right to convey the same.

Together with rights in common with the Grantor, its successors and assigns, to reach the Grantor's land from Route 77, over land of A. J. Levenson as set forth in a deed from Great Pond Club to The Sprague Corporation dated August 28, 1928 and recorded in the Cumberland County Registry of Deeds in Book 1303, Page 40.

No motorized or self-propelled vehicles or snowmobiles of any kind shall be permitted to use said pathways as it is intended for pedestrian foot traffic only. Excepted from this limitation or restriction are official governmental vehicles for the purpose of repair and maintenance of said pathways, public safety or other proper public purpose.

In the event that existing access from the Fowler Road to land of the Grantor is extinguished or prohibited, the Grantee is hereby granted access to said existing pathways over other land of the Grantor, being a twelve (12) foot strip running parallel to and easterly of Fenway Road, along the easterly sideline of the subdivision entitled Meadowcrest recorded in Cumberland County Registry of Deeds on May 3, 1960 in Plan Book 53, Page 34. Said Grantee shall assume all responsibility and costs for the relocation of said pathway within the twelve (12) foot strip and all maintenance thereof.

Grantor hereby acknowledges that not all of the existing pathways are located on its property. In the event the Grantee is

obstructed or prevented from using the now existing pathway where it passes over land of others, Grantor hereby grants to the Grantee the right to relocate the obstructed portion of the pathway on other land of the Grantor northerly and easterly of the Great Pond upon consent of the Grantor, which consent shall not be unreasonably withheld. Said Grantee shall assume all responsibility and costs for the relocation of said pathway and all maintenance thereof.

Grantee herein shall hold Grantor, its successors and assigns, harmless and indemnify it from any and all claims arising out of the use of said pathway, with the exception of accident or injury arising out of the negligence of the Grantor, its successors and assigns. The Grantor herein shall have no responsibility for the maintenance or repair of said pathway.

**To have and to hold** the same, together with all the privileges and appurtenances thereunto belonging, to the said **INHABITANTS OF THE TOWN OF CAPE ELIZABETH, their successors**.

heirs and assigns forever.

**And** the said Grantor Corporation does covenant with the said

**INHABITANTS OF THE TOWN OF CAPE ELIZABETH, their**

**successors,**

~~xxx/~~ heirs and assigns, that it will warrant and defend the premises to the said Grantee ,  
successors

its/ heirs and assigns forever, against the lawful claims and demands of all persons claiming by,

through, or under it.

**In Witness Whereof,** the said **THE SPRAGUE CORPORATION**

has caused this instrument to be sealed with its corporate seal and signed in its corporate name by

, its

thereunto duly authorized, this

day of the month of

A.D. 19 83.

**Signed, Sealed and Delivered**  
in presence of

**THE SPRAGUE CORPORATION**  
(Corporate Name)

By .....

Its

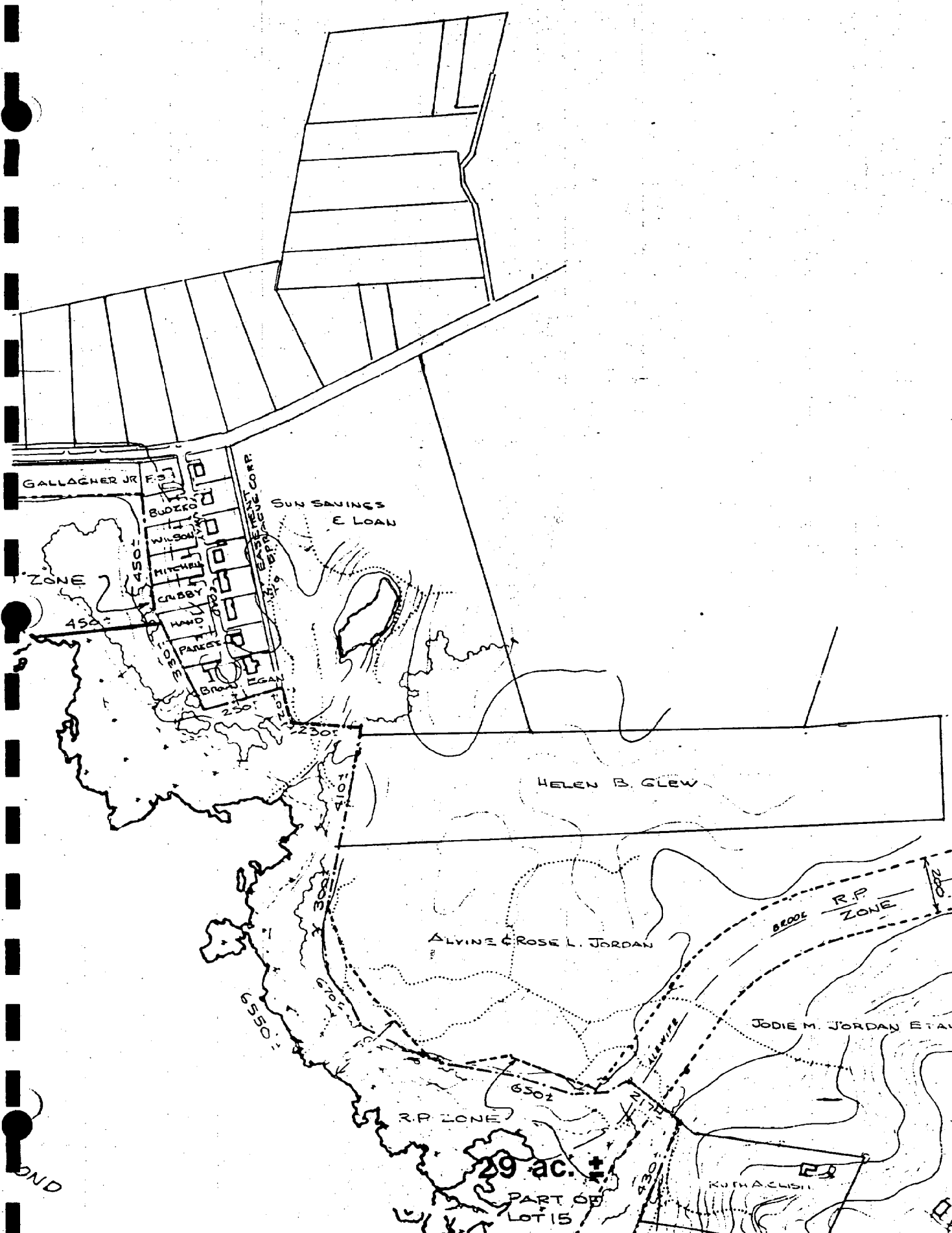
**State of Maine, County of Cumberland ss.**

**, 19 83 .**

Then personally appeared the above named

of said Grantor Corporation as aforesaid,

free act and deed in said







**LEDGEMERE III**



Know all Men by these Presents,

COPY

That we, ROBERT L. TINSMAN, of Cape Elizabeth, in the County  
of Cumberland and State of Maine, and LOUIS B. MAIETTA,  
of South Portland, County of Cumberland, State of Maine  
~~for consideration paid~~ for consideration paid, grant to the TOWN OF CAPE ELIZABETH,  
of Cape Elizabeth, County of Cumberland, State of Maine,  
whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine 04107,  
with warranty covenants, the land in Cape Elizabeth, County of Cumberland,  
State of Maine, described as follows:

A certain lot or parcel of land situated on the westerly  
side of McAuley Road in the Town of Cape Elizabeth, County  
of Cumberland and State of Maine, being Lot No. 4 as shown  
on Plan of Ledgemere III, Final Subdivision Plan, made by Land  
Use Consultants, dated March 9, 1984 and recorded in Cumberland  
County Registry of Deeds in Plan Book , Page , to which  
Plan reference is hereby made for a more particular description.

Being a portion of the premises conveyed to the Grantors  
by Sun Savings & Loan Association by deed dated June 21, 1982  
and recorded in said Registry of Deeds in Book 4980, Page 188.

The above-described premises are conveyed subject to the  
following covenants made by the Grantors on behalf of themselves,  
their heirs and assigns, which covenants shall run with and  
bind said premises in perpetuity:

1. The premises shall be used for conservation and outdoor  
recreation use only. No commercial, industrial, residential,  
or mining activities shall be permitted on the premises.

2. At present there are no structures on the premises.  
No structures of any kind, temporary or permanent, shall be  
located on the premises except signs to regulate or guide recre-  
ational use, signs to aid in nature interpretation, and signs  
to prohibit unauthorized use.

3. No road shall be constructed on the property, nor  
shall any alterations be made to the surface of the premises  
other than those caused by forces of nature, except for the  
construction and maintenance of foot trails.

4. The cutting of standing timber shall not be permitted,  
provided, however, the Grantee, its successors and assigns,  
shall have the following rights:

of Cape Elizabeth, County of Cumberland, State of Maine  
whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine 04107,

with ~~warranty covenants~~, the land in Cape Elizabeth, County of Cumberland

State of Maine, described as follows:

A certain lot or parcel of land situated on the westerly side of McAuley Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, being Lot No. 4 as shown on Plan of Ledgemere III, Final Subdivision Plan, made by Land Use Consultants, dated March 9, 1984 and recorded in Cumberland County Registry of Deeds in Plan Book , Page , to which Plan reference is hereby made for a more particular description.

Being a portion of the premises conveyed to the Grantors by Sun Savings & Loan Association by deed dated June 21, 1982 and recorded in said Registry of Deeds in Book 4980, Page 188.

The above-described premises are conveyed subject to the following covenants made by the Grantors on behalf of themselves, their heirs and assigns, which covenants shall run with and bind said premises in perpetuity:

1. The premises shall be used for conservation and outdoor recreation use only. No commercial, industrial, residential, or mining activities shall be permitted on the premises.

2. At present there are no structures on the premises. No structures of any kind, temporary or permanent, shall be located on the premises except signs to regulate or guide recreational use, signs to aid in nature interpretation, and signs to prohibit unauthorized use.

3. No road shall be constructed on the property, nor shall any alterations be made to the surface of the premises other than those caused by forces of nature, except for the construction and maintenance of foot trails.

4. The cutting of standing timber shall not be permitted, provided, however, the Grantee, its successors and assigns, shall have the following rights:

A. The right to clear and restore forest cover that is damaged or disturbed by the forces of nature.

B. The right to gather, use, or remove dead wood.

C. The right to prune or selectively thin trees to improve or maintain the health of the stand.

D. The right to remove trees for purposes of establishing or maintaining foot trails.

5. No vehicular traffic will be allowed on the property.

And we, Ruth E. Tinsman, wife of the said Robert L. Tinsman,  
and Roberta L. Maietta, wife of the said Louis B. Maietta, join as  
Grantors and release all rights by descent and all other rights.

~~And~~

~~And we, Ruth E. Tinsman, wife of the said Robert L. Tinsman, and Roberta L. Maietta, wife of the said Louis B. Maietta, join as Grantors and release all rights by descent and all other rights.~~

Witness our hands and seals this \_\_\_\_\_ day of the month of \_\_\_\_\_  
19 84.

Signed, Sealed and Delivered  
in presence of

Robert L. Tinsman

Ruth E. Tinsman

Louis B. Maietta

Roberta L. Maietta

State of Maine, County of Cumberland, \_\_\_\_\_, 1984

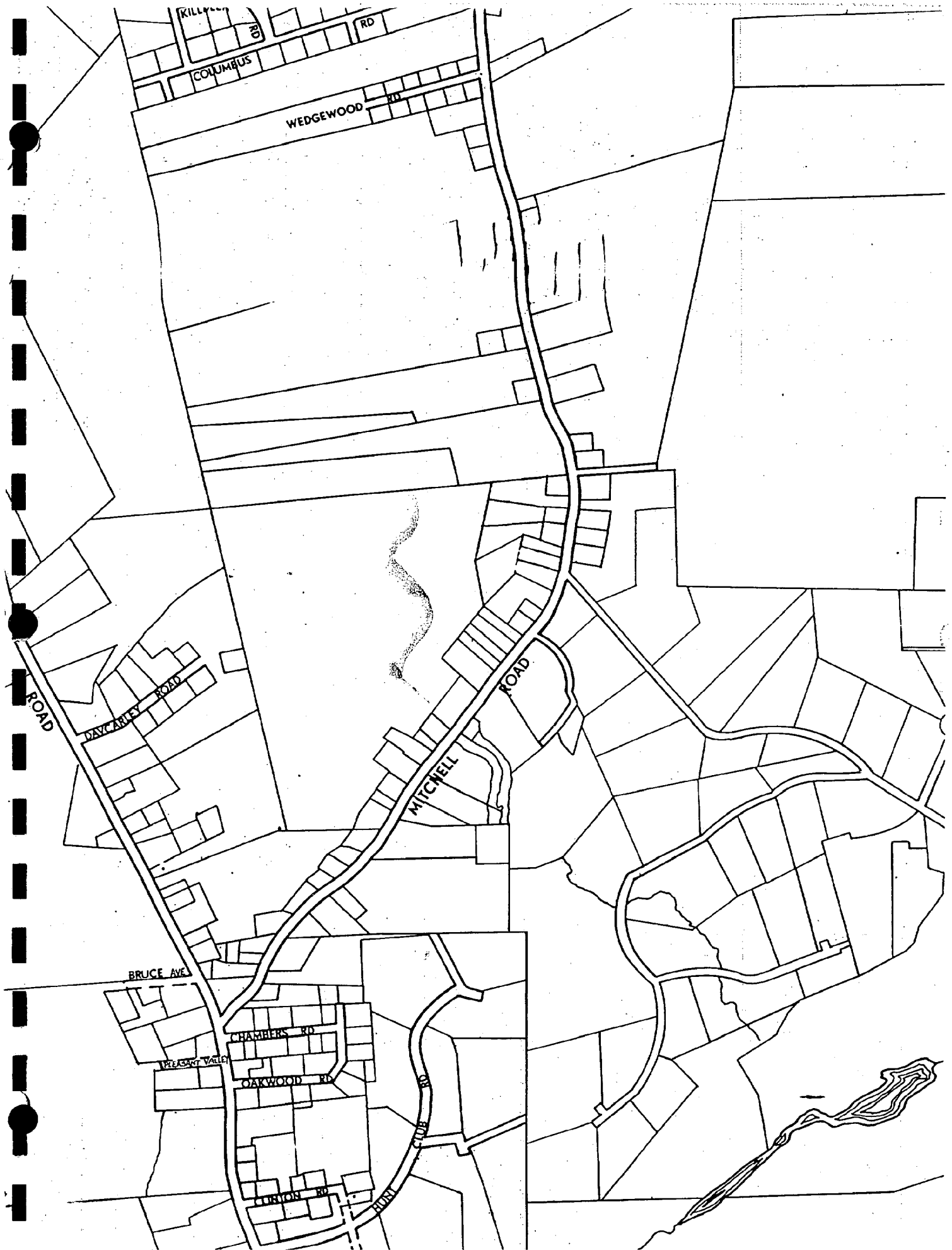
Then personally appeared the above named Robert L. Tinsman

and acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Notary Public  
Attorney at Law

HOBSTONE



# Know all Men by these Presents,

That F. S. Plummer Co., Inc.

a corporation organized and existing under the laws of the State  
of Maine and located at Gorham

in the County of Cumberland and State of Maine

in consideration of one dollar and other valuable consideration,

paid by The Town of Cape Elizabeth, a municipal body corporate and  
politic situated in the County of Cumberland and State of Maine,

and whose mailing address is 320 Ocean House Road, Cape Elizabeth  
Maine 04107

the receipt whereof it does hereby acknowledge, does hereby give.

grant, bargain, sell and convey, unto the said The Town of Cape Elizabeth,

its successors ~~and~~ and assigns forever,

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

The perpetual right, in common with others, to pass and repass  
over a certain strip of land twenty-five (25) feet in width  
situated northwesterly of Mitchell Road, in said Cape Elizabeth,  
the centerline of which strip is described as follows:

Beginning on the northerly sideline of a proposed right of way  
known as Hobstone Road at a point one hundred forty-five (145)  
feet on a course of North 90° East from the easterly sideline  
of a proposed right of way known as Hidden Creek Drive;  
thence in a general northeasterly direction five hundred thirty  
(530) feet to a point; thence in a general northwesterly direction  
four hundred sixteen (416) feet to a point; thence in a general  
northeasterly direction two hundred seventy (270) feet to a point;  
thence in a general northwesterly direction ninety-two (92) feet  
to land now or formerly of Tallman E. Doughty.

Together with the right to brush out, maintain, repair and relocate  
within said strip of land a narrow, meandering foot path for the  
use and benefit of the general public but otherwise maintaining  
said strip and its views in a natural, scenic condition and mini-  
mizing interference with the use and enjoyment of abutting land  
of the Grantor herein.

The easement granted herein is subject to the following restrictions:

1. structures and signs except to control unauthorized uses shall  
be prohibited on said strip;



persons situated in the County of Cumberland and State of Maine,  
and whose mailing address is 320 Ocean House Road, Cape Elizabeth  
Maine 04107

the receipt whereof it does hereby acknowledge, does hereby give,

grant, bargain, sell and convey, unto the said The Town of Cape Elizabeth,

its successors ~~XXXX~~ and assigns forever,

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

The perpetual right, in common with others, to pass and repass  
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situated northwesterly of Mitchell Road, in said Cape Elizabeth,  
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(530) feet to a point; thence in a general northwesterly direction  
four hundred sixteen (416) feet to a point; thence in a general  
northeasterly direction two hundred seventy (270) feet to a point;  
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to land now or formerly of Tallman E. Doughty.

Together with the right to brush out, maintain, repair and relocate  
within said strip of land a narrow, meandering foot path for the  
use and benefit of the general public but otherwise maintaining  
said strip and its views in a natural, scenic condition and mini-  
mizing interference with the use and enjoyment of abutting land  
of the Grantor herein.

The easement granted herein is subject to the following restrictions:

1. structures and signs except to control unauthorized uses shall  
be prohibited on said strip;
2. motor or other mechanized means of travel shall be prohibited  
over said strip; and
3. cutting of standing timber shall be prohibited on said strip  
except as necessary to remove dead or damaged growth, to  
prune or to selectively cut, or to maintain a healthy stand  
of trees and to manage properly said foot path.

**In Witness Whereof**, the said F. S. Plummer Co., Inc.

has caused this instrument to be sealed with its corporate seal  
and signed in its corporate name by

, its

thereunto duly authorized, this                      day of      January  
in the year one thousand nine hundred and eighty

Signed, Sealed and Delivered  
in presence of

F. S. Plummer Co., Inc.  
(CORPORATE NAME)

By

Its

(CORPORATE SEAL)

## State of Maine

County of      Cumberland                      ME.                      January                      , 1980

Then personally appeared the above named

,                      of said Grantor

Corporation as aforesaid, and acknowledged the foregoing instrument  
to be his free act and deed in his said capacity, and the free act  
and deed of said corporation.

Before me,

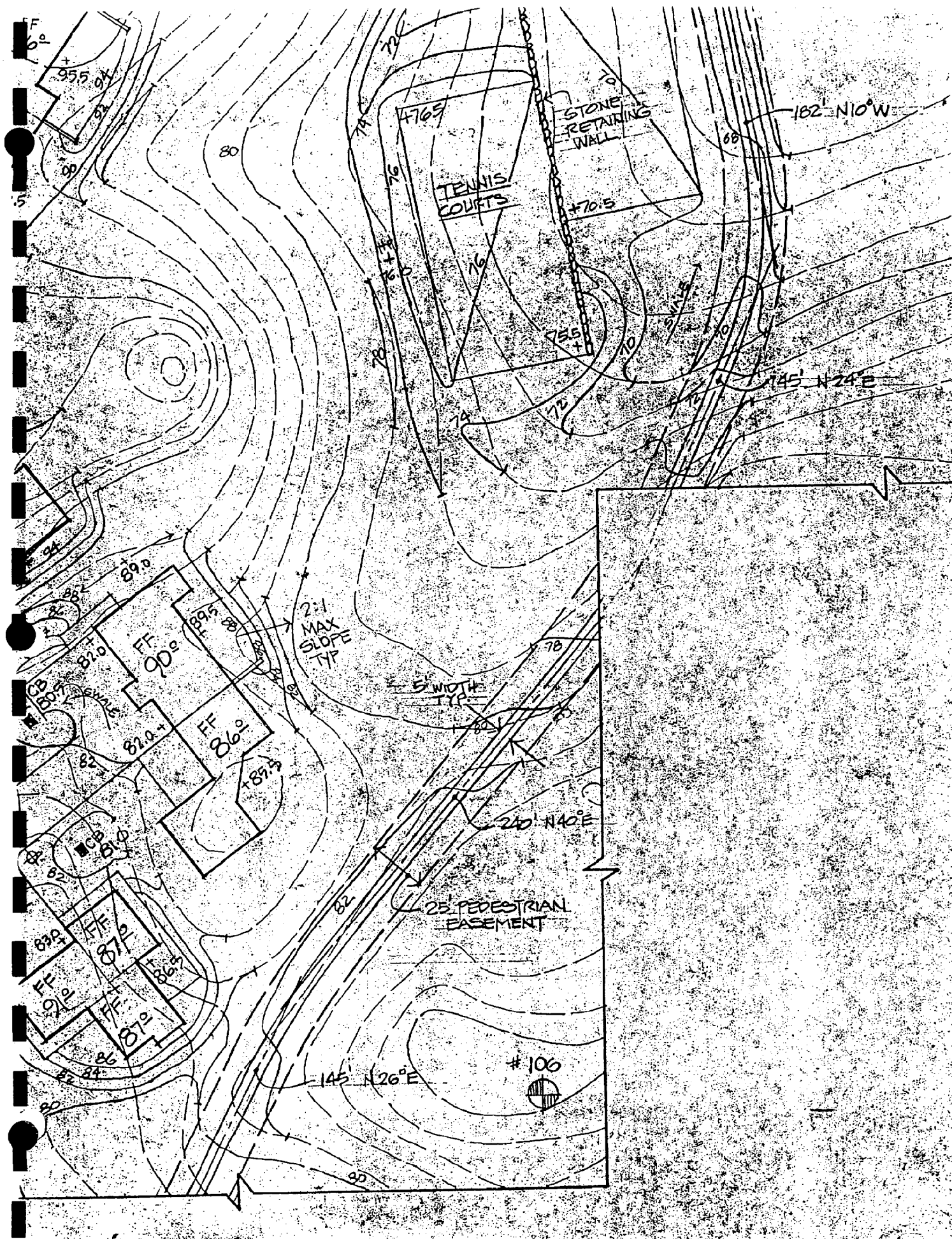
Justice of the Peace.  
Notary Public.  
Attorney at Law.

**To have and to hold**, the aforegranted and bargained premises  
with all the privileges and appurtenances thereof, to the said  
The Town of Cape Elizabeth, its successors

~~XXXXX~~ and assigns, to it and their use and behoof forever.

**And** the said Grantor Corporation does hereby COVENANT with the  
said Grantee, its <sup>successors</sup> ~~XXXXX~~ and assigns, that it is lawfully seized  
in fee of the premises, that they are free of all incumbrances;

that it has good right to sell and convey the same to the said  
Grantee to hold as aforesaid; and that it and its successors,  
shall and will WARRANT AND DEFEND the same to the said Grantee, its  
successors ~~XXXXX~~ and assigns forever, against the lawful claims and  
demands of all persons.



1778/28'

N/F TALLMAN E. DOUGHTY

N 14° W  
92'

210' N 41° E

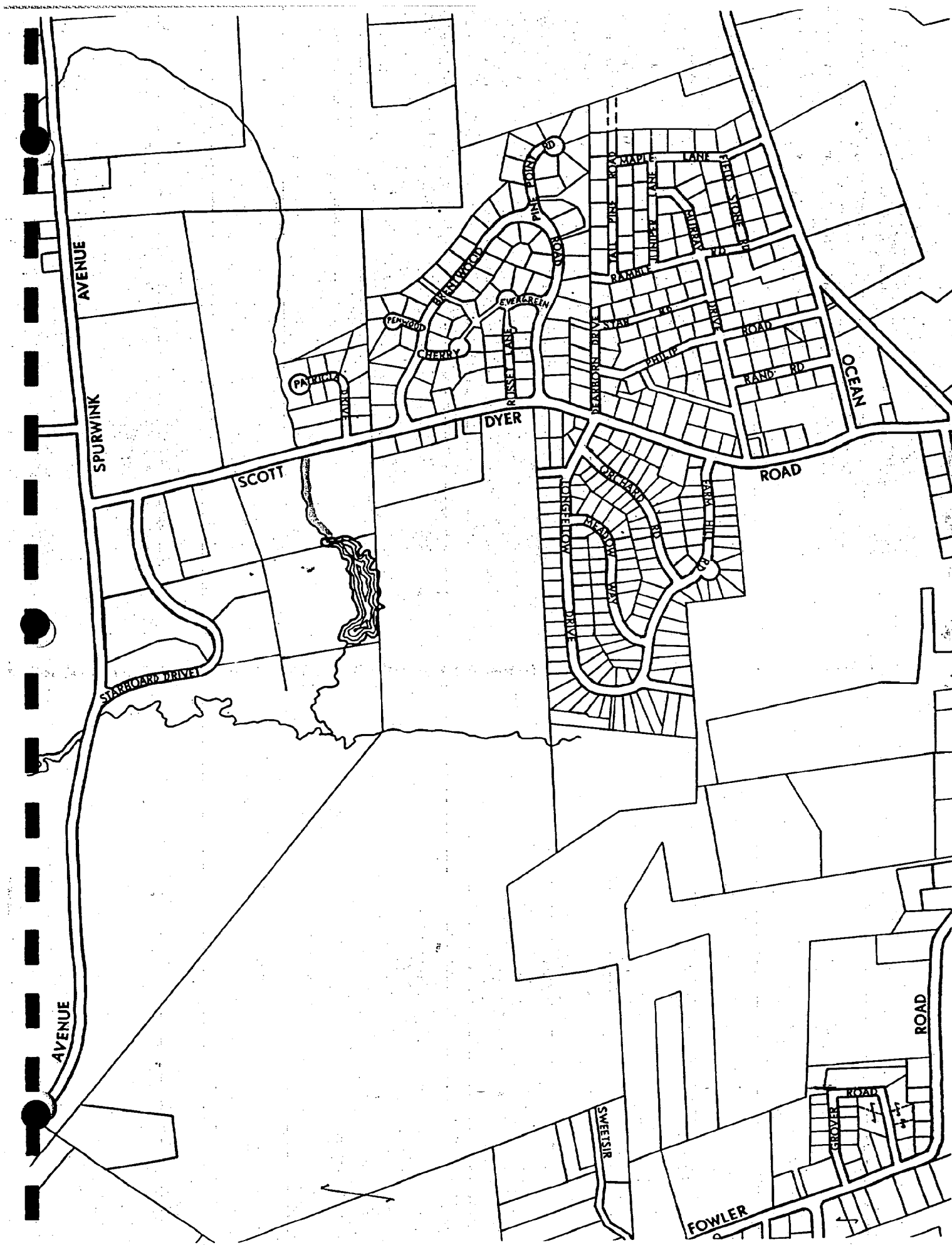
5' WIDTH  
TYP

25' PEDESTRIAN  
EASEMENT

N 43° W  
234'

69.5+

VIKING



PERKINS, THOMPSON, HINCKLEY & KEDDY  
ATTORNEYS AND COUNSELLORS AT LAW

ONE CANAL PLAZA  
P.O. BOX 426

PORTLAND, MAINE 04112

WILLIAM S. LINNELL  
1885-1968

ELLIOT P. PERKINS  
1899-1976

JAMES R. FLAKER  
1932-1960

AREA CODE 207  
TELEPHONE 774-2635

FRANKLIN G. HINCKLEY  
CASPAR F. COWAN  
ROYDEN A. KEDDY  
CHARLES P. BARNES II  
PETER G. RICH  
THOMAS SCHULTEN  
BRUCE E. LEDDY  
OWEN W. WELLS  
DOUGLAS S. CARR  
ANDREW A. CADOT  
D. BROCK HORNBY  
THOMAS G. SITZMAN

LEE D. URBAN  
RICHARD G. MOON  
JOHN R. OPPERMAN  
THOMAS B. WHEATLEY  
PRISCILLA F. GRAY  
PHILIP C. HUNT

PORTER THOMPSON  
OF COUNSEL

July 21, 1980

Dr. Peter W. Rand  
Research Department  
Maine Medical Center  
22 Bramhall Street  
Portland, Maine 04102

Re: Viking Nursing Home Easement

Dear Peter:

Enclosed is a copy of the description of the Scott Dyer Road property which the Trustees of Jupiter IX Trust mortgaged to Maine Savings Bank on March 28, 1979 for their financing of construction of the nursing home. The next to last paragraph constitutes a reservation from that mortgage of the easement interest in the land along Willow Brook, reserved from the mortgage to Maine Savings Bank but never conveyed by the Trustees to the Town.

As I recall the circumstances, the Trustees were hurried in obtaining the financing in order to meet other time requirements last March and it was for this reason that the conveyance of the easement to the Town was not completed. It is also my recollection that the easement required by the Zoning Board was to be 15 feet in width but that in reviewing the plan with the attorney for the Trustees, Nicholas Bull, it appeared reasonable to increase the width to 20 feet. At this point conveyance of the easement to the Town should be promptly completed, but it appears that two areas should have further study.

First, as discussed with you, site examination indicates the need to make the easement as wide as possible since the ground is very low, covered with alders, with little room for passage. Since the site improvements are completed, the Trustees know what land their project now requires. While they would want some buffer strip between the edge of their lawn and the foot easement, it is possible that something wider than the 20 feet would leave them with a sufficient buffer, and we discussed the possibility that you would have this examined preliminary to some negotiation with the Trustees if a greater width appeared reasonable.



Dr. Peter W. Rand

- 2 -

July 21, 1980

Second, you will note from the description that the most southerly end of Willow Brook apparently runs into a small pond before reaching the southerly line of the property. If the easement is to provide continuous access to the oak grove and Spurwink marsh, the easement must run on land to a point on the property line from which a useable easement can be located over the abutting land. I therefore suggest that you examine the Viking plan to determine where the easement will run southerly from Viking's southerly line.

As reserved in the mortgage, this walking easement would carry the implied right of the Town to render the easement area passable on foot, but it would be preferable that this right be spelled out. It seems that the easement conveyed to the Town should therefore expand on this point. I would anticipate no problem in obtaining this express right from the Trustees or in obtaining the mortgagee's assent to it.

Please let me have your ideas as soon as possible. Since Viking was required to grant the easement, I believe that the Town should spell out, as suggested above, what it reasonably requires and then the Trustees should have their attorney prepare the easement for my review. I would suggest that you discuss these points with Mr. Henchey, who knows at least one of the Trustees and could undoubtedly do a good job in discussing these points with them. I will do nothing further myself until requested by Mr. Henchey.

Sincerely yours,



CHARLES P. BARNES II

cpb/lml

encl.

cc: Mr. John E. Henchey

## SCHEDULE A to MORTGAGE AND SECURITY AGREEMENT

Ronald A. Boutet, et als, Trustees of Jupiter IX Trust, Grantor  
Maine Savings Bank, Grantee  
March 28, 1979

A certain lot or parcel of land with any improvements thereon situated in the Town of Cape Elizabeth, County of Cumberland and State of Maine, bounded and described as follows:

Commencing on the line of the road running past the Pond Cove Schoolhouse and known as the Pond Cove Road in the center of the Mill Brook, so-called, at the point where said brook crosses said road and thence running easterly on the line of said road three hundred eighty (380) feet, more or less, to the line of Brooks Farm, now or formerly owned and occupied by R. D. Libby; thence running southerly to the center of a certain ditch; thence along the line of said ditch to the center of the Mill Brook; thence along the center of said brook to the point of beginning, containing four (4) acres, more or less.

Said premises may also be described as follows:

Commencing at a point on the southerly side of said Road running past the Pond Cove School House now known as Scott Dyer Road, at a point where said road intersects Mill Brook also now known as Willow Brook; thence from said point of beginning and following the thread of Willow Brook on the following described courses: South 12° East 54 feet, more or less; thence South 4° East 100 feet, more or less; thence South 8° East 101 feet, more or less; thence South 3° East 100 feet, more or less; thence South 27° East 107 feet, more or less; thence South 57° East 45.5 feet, more or less; thence South 37° East 101 feet, more or less; thence South 5° East 250 feet, more or less; thence South 7° 30' East 138 feet, more or less and passing from the thread of Willow Brook into a small pond to a point; thence South 32° West 139 feet, more or less, to a point and the rear or southerly line of the premises herein described; thence South 88° 54' 10" East 148 feet to a tree with barbed wire which marks the southeasterly corner of the premises herein conveyed; thence North 5° 58' 59" East a distance of 1097.23 feet to the southerly side of Scott Dyer Road; thence South 84° 3' 11" West a distance of 403 feet along the southerly side of Scott Dyer Road to the point of beginning.

Excepting from the above described premises an easement twenty (20) feet in width which is contiguous to and lies easterly of the entire westerly boundary of the above described premises as said boundary follows the thread of Willow Brook, said easement extending in a southerly then southeasterly then southerly direction from Scott Dyer Road to the rear property line of the above described premises; said easement is a public easement for the sole and exclusive purpose of pedestrian access within the easement area, said pedestrian access to permit members of the public to walk from Scott Dyer Road to the rear property line of the above described premises to obtain access to the Spurwink Marsh.

Reference is made to the deed of Jack Rich et al to Ronald A. Boutet dated November 29, 1978, recorded in Cumberland County Registry of Deeds in Book 4348, Page 299, and to the deed of Ronald A. Boutet to Ronald A. Boutet et als, Trustees of Jupiter IX Trust under Declaration of Trust dated March 28, 1979, duly recorded in said Registry.

STATE OF MAINE

CUMBERLAND, ME.

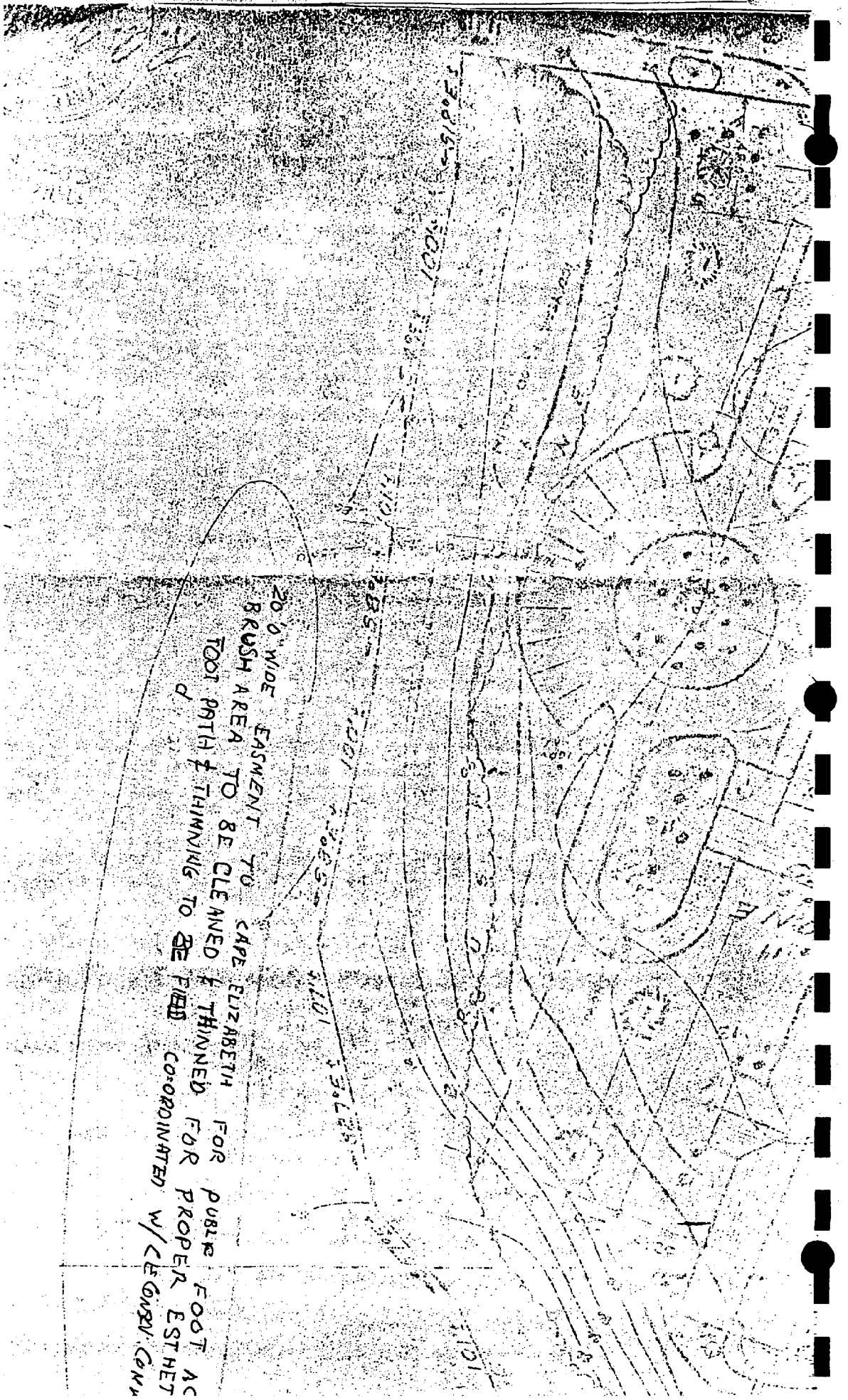
REGISTRY OF DEEDS

Received at 4 H 25 M P M on MAR 28 1979 and recorded in  
Book 4398 Page 35

Attest

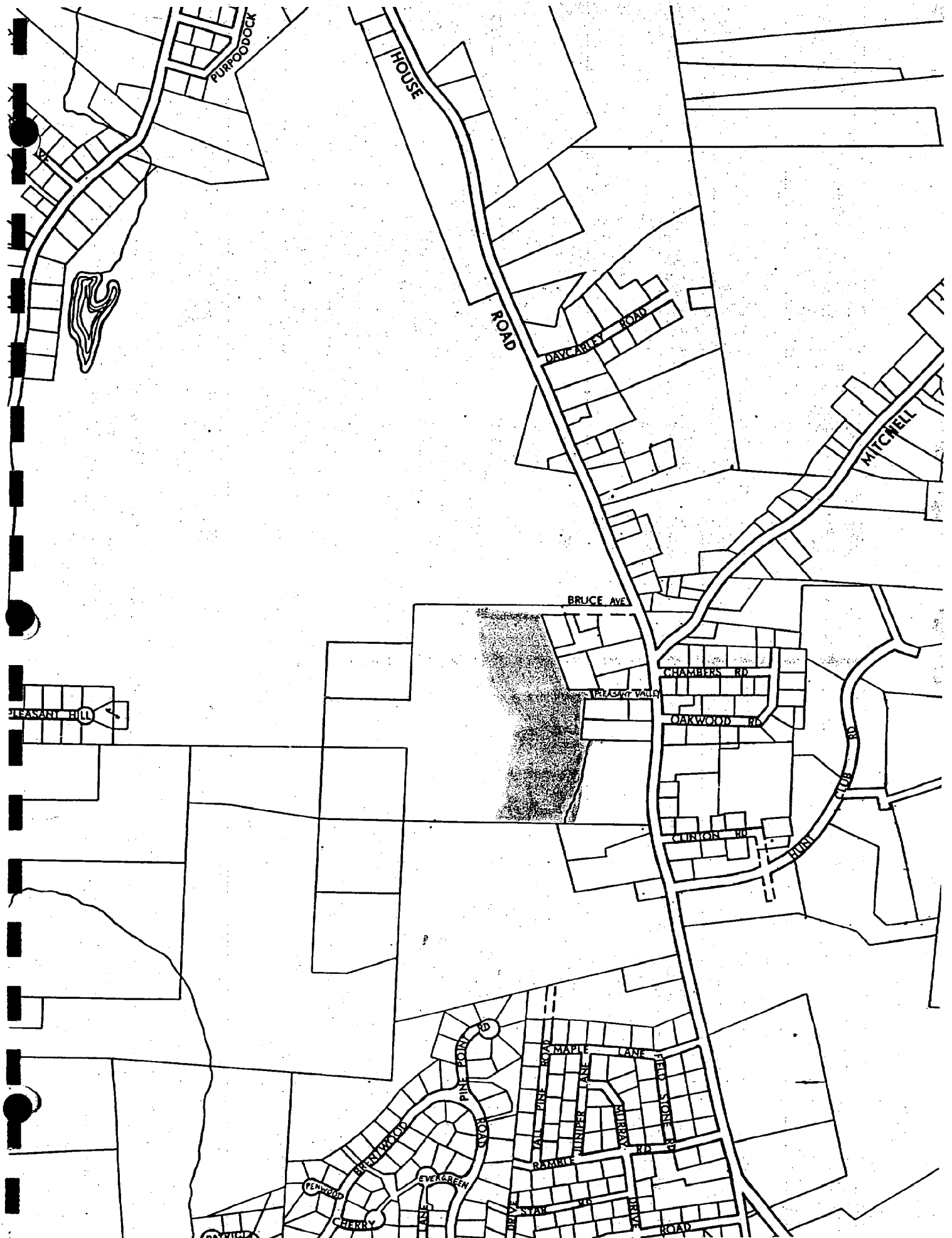
*Leah J. Libbette* DEPUTY Registrar

200' WIDE EASEMENT TO CAPE ELIZABETH FOR PUBLIC FOOT AC  
BRUSH AREA TO BE CLEANED & THINNED FOR PROPER ESTHET  
TOOT PATH & THINNING TO BE FILED CO-ORDINATED W/LE GUNBY COUN



20'0" WIDE EASEMENT TO CAPE ELIZABETH FOR PUBLIC FOOT ACCESS  
BRUSH AREA TO BE CLEANED & THINNED FOR PROPER ESTHETIC VALUE  
TOO PATH & THINNING TO BE FIELD CO-ORDINATED W/ CLEVERSON.COMM

RAM & CO.



C 111/1  
6/17/81

**CONSERVATION EASEMENT**

THIS INDENTURE made this \_\_\_\_\_ day of \_\_\_\_\_,

1981, by and between RAM AND CO., a corporation organized and existing under the laws of the State of Maine with offices at 103 Exchange Street, Portland, Maine, hereinafter referred to as the Grantor, and the Town of Cape Elizabeth, a municipal corporation having its principal office at Cape Elizabeth, Cumberland County, Maine, hereinafter referred to as the Grantee.

**W I T N E S S E T H:**

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, as amended, Sections 667 and 668, conservation restrictions in the form of conservation easements were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Title 30, Maine Revised Statutes, 1964, as amended, Section 3851, provides for the establishment of Conservation Commissions and authorizes such Commissions to receive gifts, and to acquire land and conservation easements in the name of the municipality; and

WHEREAS, the Town of Cape Elizabeth, by vote of its Town Council at its meeting held on April 26, 1971, established the Cape Elizabeth Conservation Commission; and

WHEREAS, the Grantee has determined that the land lying westerly of Ocean House Road in the Town of Cape Elizabeth as specifically described herein and owned by the Grantor is a desirable location for an open area for the purposes of preservation or restriction as defined by said Section 3851; and

WHEREAS, the Town of Cape Elizabeth at a meeting held on June 22, 1981, by vote of its Town Council, authorized the Grantee to accept conservation easements as defined herein over the land hereinafter

the Grantee.

W I T N E S S E T H:

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, as amended, Sections 667 and 668, conservation restrictions in the form of conservation easements were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Title 30, Maine Revised Statutes, 1964, as amended, Section 3851, provides for the establishment of Conservation Commissions and authorizes such Commissions to receive gifts, and to acquire land and conservation easements in the name of the municipality; and

WHEREAS, the Town of Cape Elizabeth, by vote of its Town Council at its meeting held on April 26, 1971, established the Cape Elizabeth Conservation Commission; and

WHEREAS, the Grantee has determined that the land lying westerly of Ocean House Road in the Town of Cape Elizabeth as specifically described herein and owned by the Grantor is a desirable location for an open area for the purposes of preservation or restriction as defined by said Section 3851; and

WHEREAS, the Town of Cape Elizabeth at a meeting held on June 22, 1981, by vote of its Town Council, authorized the Grantee to accept conservation easements as defined herein over the land hereinafter described and other land for the purpose of establishing an open area; and

WHEREAS, the Grantor and the Grantee recognize and acknowledge a common purpose to conserve, preserve, and prevent the use or development of the land hereinafter described in any manner which would conflict with the maintenance of said land in its natural, open and scenic condition; and



WHEREAS, the Grantor and the Grantee have determined that it is in the public interest to acquire a Conservation Easement or Restriction over certain real property (hereinafter referred to as the "Property") of which the Grantor is the owner in fee, as described in Schedule "A" which is attached hereto and incorporated herein.

NOW THEREFORE, the Grantor, for and in consideration of the facts above recited and of the covenants herein contained, and as an absolute gift, does hereby freely give, grant, and convey unto the Grantee, its successors and assigns forever, for the benefit of the public, a Conservation Easement or Restriction in perpetuity over the Property, consisting of the following:

- (1) the right of public view of the Property in its natural, scenic, open and wooded condition;
- (2) the right of the Grantee, in a reasonable manner, and at reasonable times, to enter and inspect the Property;
- (3) the right of the Grantee to enforce by injunction or proceedings at law or in equity, the covenants hereinafter set forth;
- (4) the right of the Grantee to clear, mark, maintain, relocate and replace, from time to time, an outdoor recreational trail suitable for hiking and cross-country skiing traversing the Property to be open to use by members of the general public;
- (5) the right of the Grantee to construct, maintain, relocate and replace such foot bridges on the Property as are necessary to the uninterrupted extension of said outdoor recreational trail and appropriate devices suitable to prevent entry on or use of said trail by any type of mechanical vehicle;
- (6) the right of the Grantee to erect and maintain on the Property directional and informational signs and trail markers at appropriate places along the trail;
- (7) the right of public entry for the purpose of using said

successors and assigns forever, for the benefit of the public, a Conservation Easement or Restriction in perpetuity over the Property, consisting of the following:

- (1) the right of public view of the Property in its natural, scenic, open and wooded condition;
- (2) the right of the Grantee, in a reasonable manner, and at reasonable times, to enter and inspect the Property;
- (3) the right of the Grantee to enforce by injunction or proceedings at law or in equity, the covenants hereinafter set forth;
- (4) the right of the Grantee to clear, mark, maintain, relocate and replace, from time to time, an outdoor recreational trail suitable for hiking and cross-country skiing traversing the Property to be open to use by members of the general public;
- (5) the right of the Grantee to construct, maintain, relocate and replace such foot bridges on the Property as are necessary to the uninterrupted extension of said outdoor recreational trail and appropriate devices suitable to prevent entry on or use of said trail by any type of mechanical vehicle;
- (6) the right of the Grantee to erect and maintain on the Property directional and informational signs and trail markers at appropriate places along the trail;
- (7) the right of public entry for the purpose of using said outdoor recreational trail on the Property but only under the supervision and control of the Grantee.

AND in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants, on behalf of itself, its successors and assigns, which shall run with and bind the Property in perpetuity:

FIRST: the Purpose of this Indenture is to preserve the Property for non-destructive, non-mechanized, and non-developed outdoor enjoyment, and to perpetuate the natural character of the Property. The Property shall be preserved forever in its natural state, except as authorized hereunder.

SECOND: There shall be no cutting of trees or plants on the Property except to clear and restore forest cover that is damaged or disturbed by the forces of nature and, after reasonable consultation with Grantor so long as it retains any interest in the land abutting any portion of the westerly line of the Property, to prune or very selectively thin trees to provide or maintain public views from said recreational trail, but only within 100 yards from the southerly sideline of the Property and within 100 feet from the northerly sideline of the Property.

THIRD: There shall be no filling, excavating, removal of soil, sand, gravel, rock, minerals, or other natural surface or sub-surface materials on or in the Property except as authorized hereunder.

FOURTH: No man-made structures of any kind, temporary or permanent, shall be located or maintained on or in the Property except as authorized hereunder.

FIFTH: If any part of this Indenture shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of this Indenture.

SIXTH: the right of public entry to the Property for the purpose of using the conservation easement shall not be in such fashion as to interfere with the privacy of Grantor, its successors and assigns, and shall be subject to the supervision and control of Grantee, its successors and assigns.

SEVENTH: Grantor, its successors and assigns, does not

with Grantor so long as it retains any interest in the land abutting any portion of the westerly line of the Property, to prune or very selectively thin trees to provide or maintain public views from said recreational trail, but only within 100 yards from the southerly sideline of the Property and within 100 feet from the northerly sideline of the Property.

THIRD: There shall be no filling, excavating, removal of soil, sand, gravel, rock, minerals, or other natural surface or sub-surface materials on or in the Property except as authorized hereunder.

FOURTH: No man-made structures of any kind, temporary or permanent, shall be located or maintained on or in the Property except as authorized hereunder.

FIFTH: If any part of this Indenture shall be decreed to be invalid by any court of competent jurisdiction, such decree shall not be interpreted so as to invalidate the remainder of this Indenture.

SIXTH: the right of public entry to the Property for the purpose of using the conservation easement shall not be in such fashion as to interfere with the privacy of Grantor, its successors and assigns, and shall be subject to the supervision and control of Grantee, its successors and assigns.

SEVENTH: Grantor, its successors and assigns, does not create any duty of care to keep said conservation easement safe for entry or for use by members of the general public for recreational purposes or to give warning of any hazardous condition, use, or activity on such premises to persons entering for recreational purposes, nor extend any assurance that the premises are safe for

any such purposes, nor make any person entering upon said trail an invitee or licensee to whom a duty of care is owed, nor assume responsibility for or incur liability for any injury to person or property caused by any act of any person, or any other cause, and it is expressly intended that all activities of Grantee and of the general public entering upon the property be subject to the limited liability provisions of Title 14, Maine Revised Statutes, 1964, as amended, Section 159-A.

TO HAVE AND TO HOLD the said Conservation Easement or Restriction unto the said Grantee and its assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein shall be construed as "Conservation Restrictions" as said term is defined in Section 667 of Title 33, of the Revised Statutes of the State of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon the Grantor, its successors and assigns, and upon the Property, and shall inure to the benefit of the Grantee, its successors and assigns. Should it be necessary or convenient at any time in the future in connection with any action of the Grantee to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at any time, shall be deemed to be the agreement or approval of all the owners of the Property. All costs and expenses relating to the use and maintenance of the easements granted herein shall be borne by the Grantee.

In consideration of the rights herein granted, the Grantee, by its acceptance hereof and as trustee for the public for whose benefit this Conservation Easement has been granted, hereby agrees to undertake the protection of the Property in accordance with the conditions set forth above.

Restriction unto the said Grantee and its assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein shall be construed as "Conservation Restrictions" as said term is defined in Section 667 of Title 33, of the Revised Statutes of the State of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon the Grantor, its successors and assigns, and upon the Property, and shall inure to the benefit of the Grantee, its successors and assigns. Should it be necessary or convenient at any time in the future in connection with any action of the Grantee to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at any time, shall be deemed to be the agreement or approval of all the owners of the Property. All costs and expenses relating to the use and maintenance of the easements granted herein shall be borne by the Grantee.

In consideration of the rights herein granted, the Grantee, by its acceptance hereof and as trustee for the public for whose benefit this Conservation Easement has been granted, hereby agrees to undertake the protection of the Property in accordance with the conditions set forth above.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed and sealed with its corporate seal by  
its \_\_\_\_\_, hereunto duly authorized, the day and year first above written.

RAM & CO.

By: \_\_\_\_\_  
Its \_\_\_\_\_

The Town of Cape Elizabeth, by its execution hereunder, does accept this Conservation Easement this day of June, 1981.

THE TOWN OF CAPE ELIZABETH

By: \_\_\_\_\_  
Its

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 1981

Personally appeared the above-named  
of RAM & CO., and acknowledged the above instrument to be his free act  
and deed and the free act and deed of said Corporation.

Before me,

\_\_\_\_\_  
Notary Public

~~8~~

**SCHEDULE A TO CONSERVATION EASEMENT  
FROM RAM & CO. TO THE TOWN OF CAPE ELIZABETH, MAINE**

A certain lot or parcel of land situated in Cape Elizabeth, County of Cumberland, State of Maine, and lying generally Westerly of Ocean House Road, and bounded and described as follows:

Beginning at a point on the dividing line between the premises conveyed to P. W. Sprague by deed of Howard Hannaford dated July 20, 1920, and recorded in Cumberland County Registry of Deeds in Book 1057, Page 160, and the premises conveyed to P. W. Sprague by deed of S. B. Thoms dated July 12, 1920, and recorded in said Registry of Deeds in Book 1057, Page 40, which point of beginning is situated in a stone wall at a corner of premises formerly of Hilda M. Lincoln and now of one Foden, and which point of beginning is four hundred twenty-six (326') feet, more or less, measured N 83° 01' W on the line of said premises conveyed by deed recorded in said Registry of Deeds in Book 1057, Page 160, Westerly of Ocean House Road;

Thence by said stone wall and land formerly of P. W. Sprague and now conveyed by the Lions Club of Cape Elizabeth, Inc. to the Town of Cape Elizabeth by deed dated July 12, 1972 and recorded in said Registry in Book 3268, Page 7, N 82° 29' 50" W 317.46 feet to a point;

Thence through land of the grantors herein on the following courses and distances:

N 18° 56' 20" E 515.00 feet to a point;

Thence N 21° 33' 30" W 301.56 feet to a point;

Thence N 5° 32' 45" E 350.00 feet to land conveyed by Sprague Corporation to the Purpoedock Club by deed dated August 18, 1926 and recorded in said Registry in Book 1244, Page 361;

Thence by a stone wall and land of said Purpoedock Club S 83° 04' 15" E 158.08 feet to the Northwesterly corner of the parcel of land conveyed by Peter J. Halla to Richard H. and Carole B. Nelson by deed dated May 30, 1978 and recorded in said Registry in Book 4226, Page 254;

Thence by land of said Nelson S 14° 28' 55" E 310.78 feet to a steel rod;

Thence continuing by land of said Nelson N 75° 31' 05" E 150.00 feet to a steel rod and land of the Sarah A. Bruce Heirs;

Thence by land of said Bruce Heirs and land conveyed by Leon A. Warren to J. Gordon and Helen B. Dodge by deed dated February 22, 1974 and recorded in said Registry in Book 3513, Page 306, S 14° 28' 55" E, 180.80 feet to a steel rod in the Northerly sideline of Pleasant Valley Avenue;

Thence by said Pleasant Valley Avenue N 86° 54' 25" E 93.18 feet to a steel rod at the terminus of said Avenue;

Thence across the terminus of said Avenue and by land conveyed by Raymond R. MacArthur to John F. and Ann C. Ridge by deed dated May 24, 1963 and recorded in said Registry in Book 2762, Page 152 and by land conveyed by Sarah A. Bruce to Harold C. and Edith J. Hook by deed dated October 8, 1949 and recorded in said Registry in Book 1976, Page 126, S 1° 05' 35" W 267.05 feet to a steel rod at the Southwesterly corner of said Hook's land;

Thence continuing by land of said Hook S 84° 44' 55" E 38.12 feet to a steel rod;



veyed by the Lions Club of Cape Elizabeth, Inc. to the Town of Cape Elizabeth by deed dated July 12, 1972 and recorded in said Registry in Book 3268, Page 7, N 82° 29' 50" W 317.46 feet to a point;

Thence through land of the grantors herein on the following courses and distances:

N 18° 56' 20" E 315.00 feet to a point;

Thence N 21° 33' 30" W 301.56 feet to a point;

Thence N 5° 32' 45" E 350.00 feet to land conveyed by Sprague Corporation to the Purpoedock Club by deed dated August 18, 1926 and recorded in said Registry in Book 1266, Page 361;

Thence by a stone wall and land of said Purpoedock Club S 83° 04' 15" E 158.08 feet to the Northwest corner of the parcel of land conveyed by Peter J. Hallia to Richard H. and Carol B. Nelson by deed dated May 30, 1978 and recorded in said Registry in Book 4226, Page 254;

Thence by land of said Nelson S 14° 28' 55" E 310.78 feet to a steel rod;

Thence continuing by land of said Nelson N 75° 31' 05" E 150.00 feet to a steel rod and land of the Sarah A. Bruce Heirs;

Thence by land of said Bruce Heirs and land conveyed by Leon A. Warren to J. Gordon and Helen B. Dodge by deed dated February 22, 1974 and recorded in said Registry in Book 3513, Page 306, S 14° 28' 55" E, 180.80 feet to a steel rod in the Northerly sideline of Pleasant Valley Avenue;

Thence by said Pleasant Valley Avenue N 86° 54' 25" W 93.18 feet to a steel rod at the terminus of said Avenue;

Thence across the terminus of said Avenue and by land conveyed by Raymond R. MacArthur to John E. and Ann C. Ridge by deed dated May 24, 1963 and recorded in said Registry in Book 2762, Page 152 and by land conveyed by Sarah A. Bruce to Harold C. and Edith J. Hook by deed dated October 8, 1949 and recorded in said Registry in Book 1976, Page 126, S 3° 05' 35" W 267.05 feet to a steel rod at the Southwesterly corner of said Hook's land;

Thence continuing by land of said Hook S 84° 44' 55" E 38.12 feet to a steel rod and land conveyed by First Auburn Trust Co. to Eleanor Foden by deed dated November 8, 1926 and recorded in said Registry in Book 1250, Page 339;

Thence by land of said Foden and in the vicinity of a drainage ditch on the following courses and distances:

S 19° 52' 05" W 259.05 feet to a steel rod in an old bridge;

Thence S 23° 49' 35" W 192.90 feet to a steel rod;

Thence S 67° 13' 35" E 37.90 feet to the point of beginning.

The area of the above described parcel being 7.45 acres.

The above described courses being magnetic and of the year 1980.

There is excepted and reserved from the above described premises, for the benefit of Ram & Co., its successors and assigns forever, who include but are not limited to all owners of condominium units in Wildwood, a proposed condominium, those certain roads designated in part as Wildwood Drive and Pleasant Valley Avenue Extension as same are shown on the Plan of Property in Cape Elizabeth, Maine, made for Grantor by H.I. & E.C. Jordan, dated \_\_\_\_\_, 1981 and recorded at the Cumberland County Registry of Deeds in Unit File No. \_\_, to which Plan reference should be had for a more specific description of said roads, [subject however, to the right of the Town of Cape Elizabeth and its citizens to cross over said roads at such points where the outdoor recreational trail referred to in the Conservation Easement abuts said roads.] It is understood and agreed that none of the affirmative rights or covenants contained in this Indenture [except the right to cross said roads as set forth in the preceeding sentence] shall apply to the said Wildwood Drive and Pleasant Valley Avenue Extension, it being expressly understood that Ram & Co. retains unto itself a fee simple absolute title to said roads for all purposes which include but are not limited to passage by pedestrian and vehicular traffic and the installation and maintenance of utility and sewer lines as referred to herein.

Also excepting and reserving unto the Grantor, its successors and assigns forever, such rights of way and easements adjacent to either side of said Wildwood Drive and Pleasant Valley Avenue Extension as are necessary for the repair, replacement, maintenance and improvement of said roads, together with the right to install, maintain, improve, repair, and replace such utility lines, pipes and conduits for the transmission of gas, sewage, electricity, water and telephone, on, over, across and under portions of the premises lying adjacent to either side of said roads. Ram & Co. agrees for itself, its successors and assigns to restore said premises to their prior existing condition after the completion of said

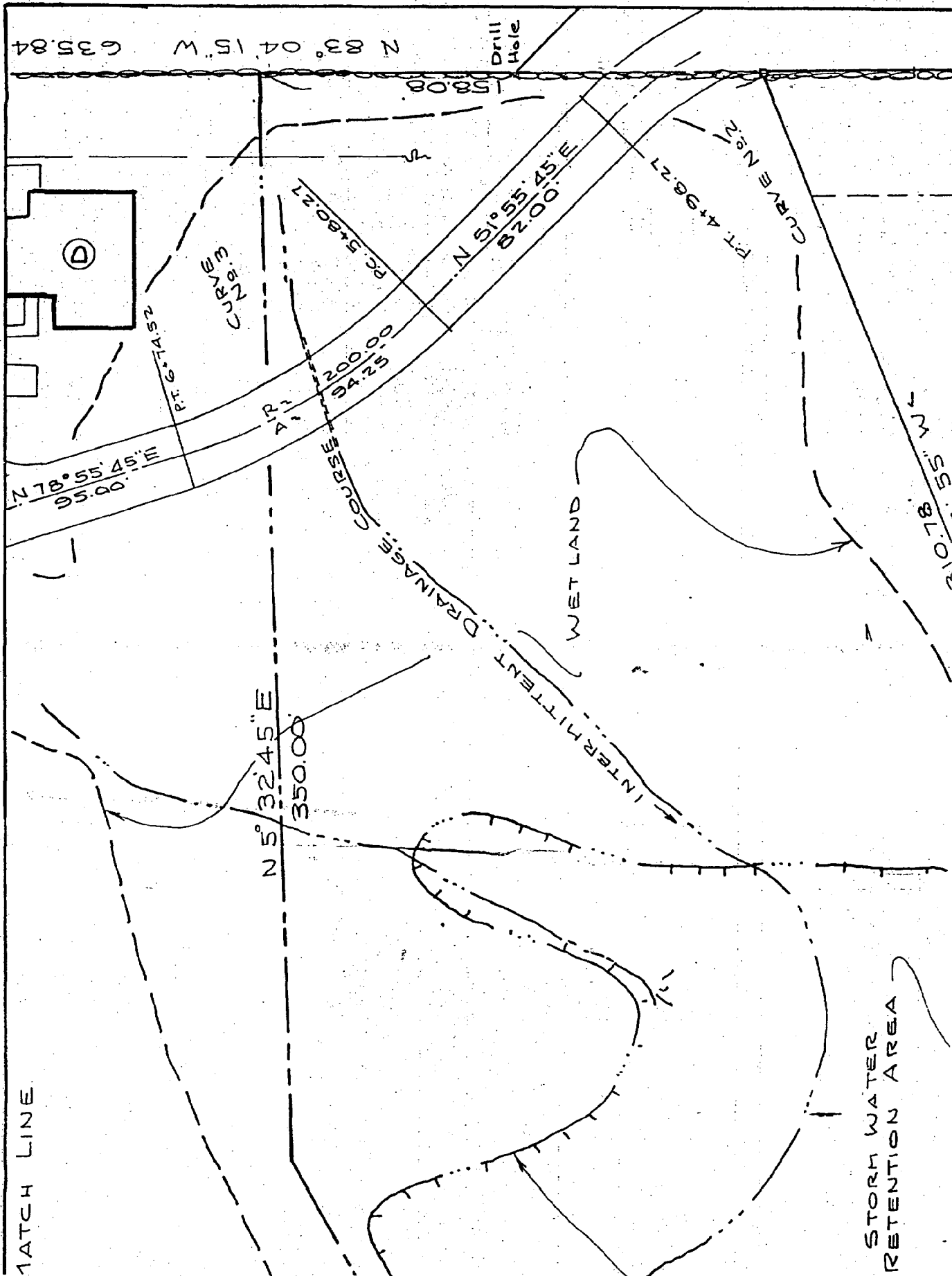
drainage easement as described in deed from the said Ram & Co. to the Purpoodock Club dated June \_\_, 1981, recorded at the Cumberland County Registry of Deeds in Book \_\_, Page \_\_; (c) all rights and obligations reserved by or imposed upon Ram & Co. by any governmental agency including the Town of Cape Elizabeth and the State of Maine with respect to the installation, maintenance, repair, replacement or improvement of a storm water retention area and sewer system including all pipes, conduits and an outlet control structure and such other obligations and requirements as have now been or may in the future be required or imposed by virtue of any permit or approval issued by either the State of Maine or the Town of Cape Elizabeth; further reserving and excepting unto the said Ram & Co., its successors and assigns forever, the right to enter into said conservation easement in order to take any action or perform any activity necessary to comply with said permits and approvals.

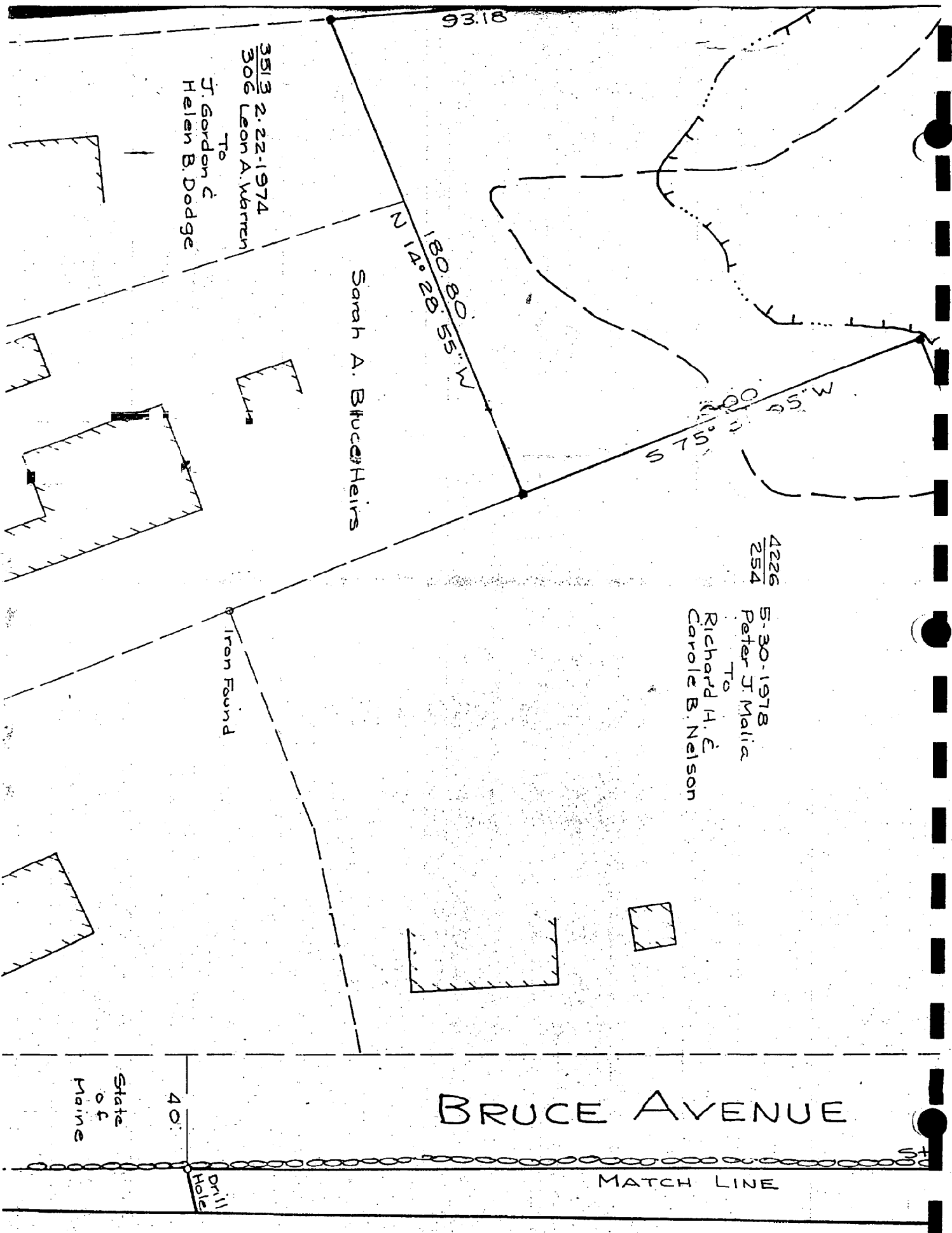
Plan reference should be had for a more specific description of said roads, [subject however, to the right of the Town of Cape Elizabeth and its citizens to cross over said roads at such points where the outdoor recreational trail referred to in the Conservation Easement abuts said roads.] It is understood and agreed that none of the affirmative rights or covenants contained in this Indenture [except the right to cross said roads as set forth in the preceeding sentence] shall apply to the said Wildwood Drive and Pleasant Valley Avenue Extension, it being expressly understood that Ram & Co. retains unto itself a fee simple absolute title to said roads for all purposes which include but are not limited to passage by pedestrian and vehicular traffic and the installation and maintenance of utility and sewer lines as referred to herein.

Also excepting and reserving unto the Grantor, its successors and assigns forever, such rights of way and easements adjacent to either side of said Wildwood Drive and Pleasant Valley Avenue Extension as are necessary for the repair, replacement, maintenance and improvement of said roads, together with the right to install, maintain, improve, repair, and replace such utility lines, pipes and conduits for the transmission of gas, sewage, electricity, water and telephone, on, over, across and under portions of the premises lying adjacent to either side of said roads. Ram & Co. agrees for itself, its successors and assigns to restore said premises to their prior existing condition after the completion of said installation, repairs, maintenance and improvements.

The aforesaid premises are conveyed subject to: (a) the right, if any, in favor of Hilda M. Lincoln, her heirs and assigns, to take water from the spring located on the premises as provided in deed from Samuel B. Thombs to Hilda M. Lincoln, dated \_\_\_\_\_, recorded at the Cumberland County Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_\_; (b) a

ATCH LINE





93.18

3513 2-22-1974  
306 Leon A. Warren  
To  
J. Gordon &  
Helen B. Dodge

Sarah A. Bruce Heirs

N 14° 20' 55" W  
180.80

S 75° 52' W  
100.55

4226  
254

5-30-1978  
Peter J. Malia  
To  
Richard H. &  
Carole B. Nelson

Iron Found

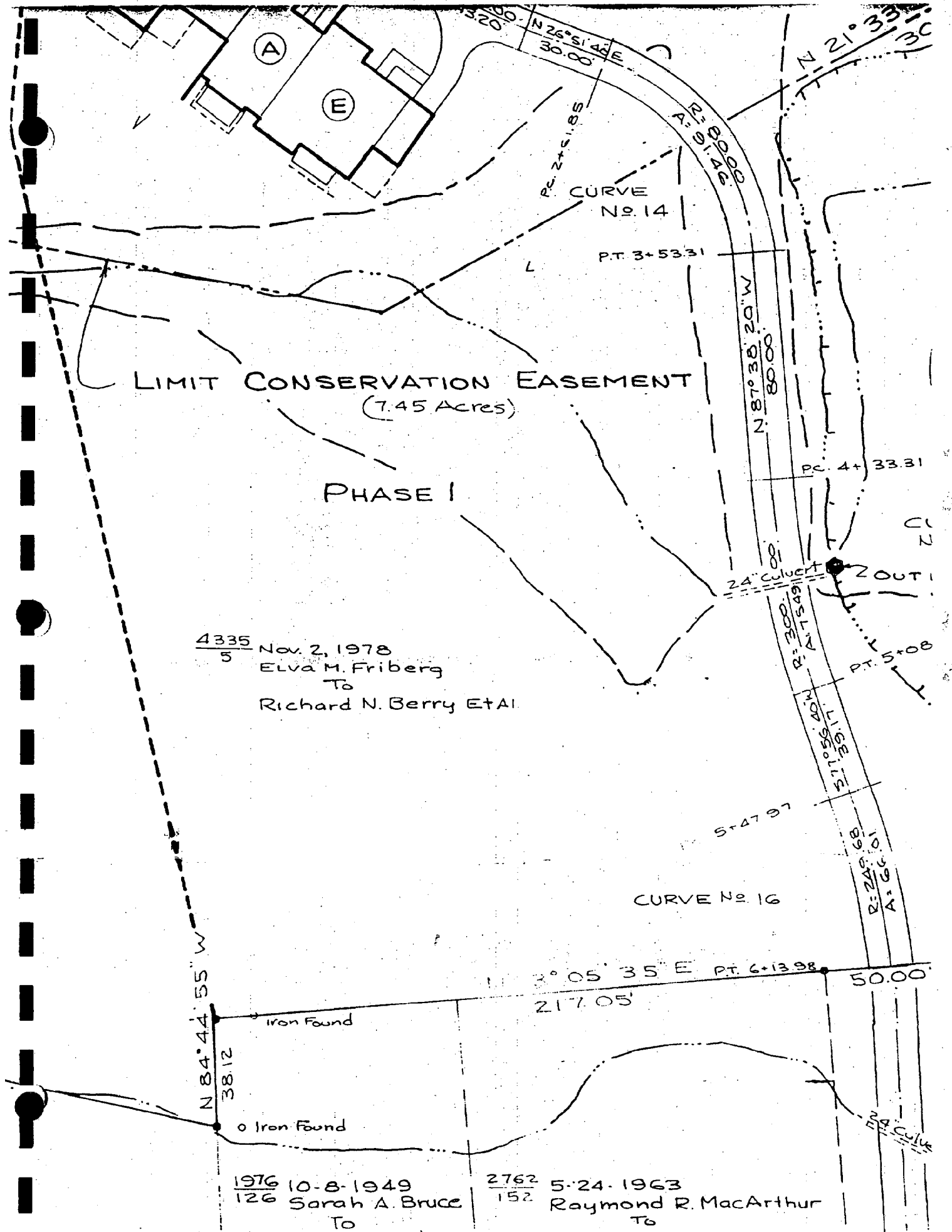
State  
of  
Maine

40'

Drill  
Hole

BRUCE AVENUE

MATCH LINE



LIMIT CONSERVATION EASEMENT  
(7.45 Acres)

PHASE I

$\frac{4335}{5}$  Nov. 2, 1978  
Elva M. Friberg  
To  
Richard N. Berry Et Al.

$\frac{1976}{126}$  10-8-1949  
Sarah A. Bruce  
To

$\frac{2762}{152}$  5-24-1963  
Raymond R. MacArthur  
To

N 18° 56' 20" E  
515.00'

WETLAND

STREAM

INTERMITTENT

PHASE 2

192.90'  
N 23° 49' 35" E

Rebar Set  
in old Bridge

259.05'  
N 19° 52' 05" E

1250  
339 11-8-1926  
First Auburn Trust Co.  
To  
Eleanor Foden



Line R. Greco To  
E. Katherine Peters

3268 7-12-1972 Lions Club of Cape Elizabeth N 82°  
Inc. To The Town of Cape Elizabeth

317.46

Iron Found

N 67° 13' 35" W  
37.90

192.90  
N 23° 49' 35" E

Rebar Set  
in old Bridge

N 18° 56' 20" E  
515.00

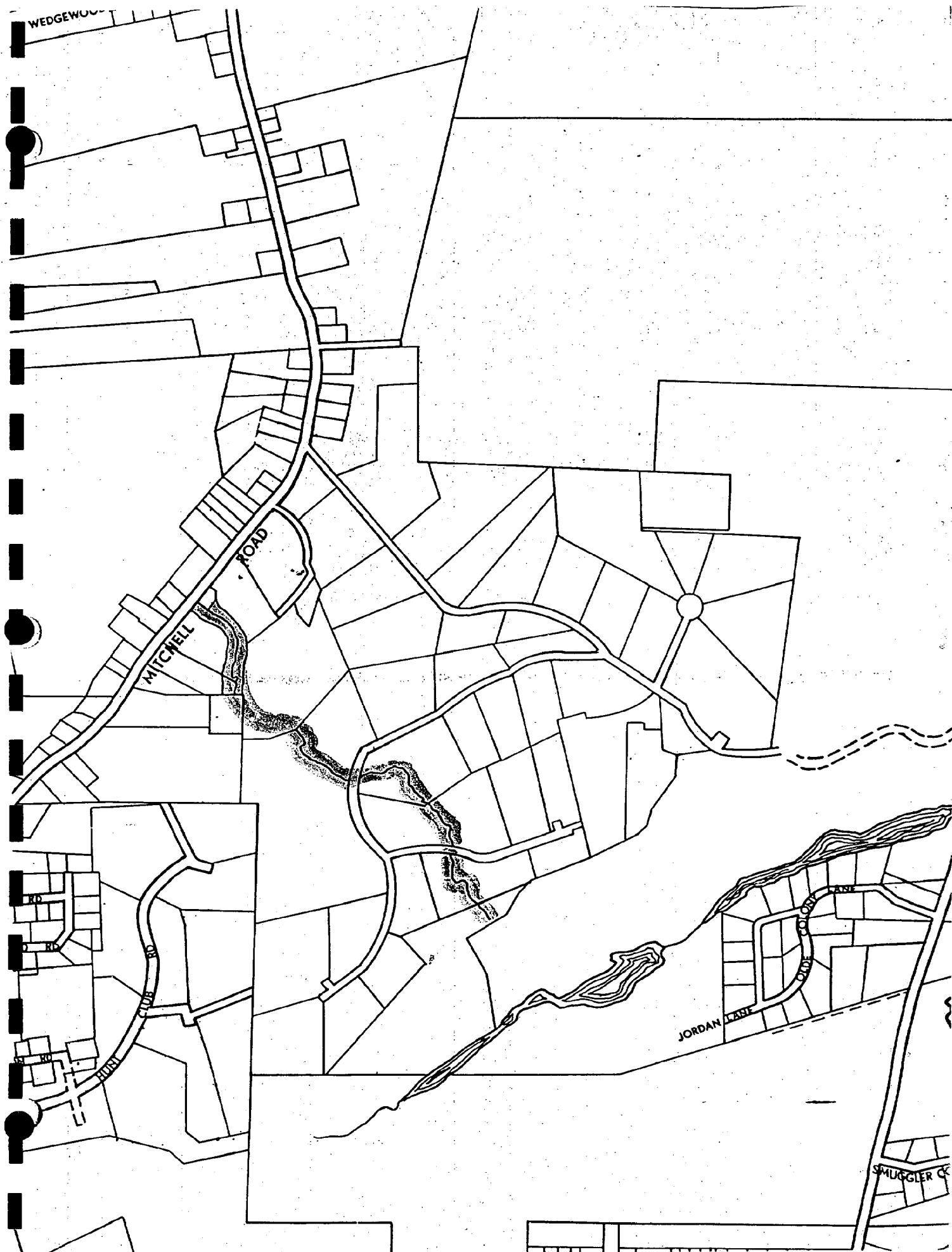
INTERMITTENT

STREAM

PHASE 2

1250 11-8-1926  
339 First Auburn Trust  
To  
Eleanor Foden

CRANBROOK



## CONSERVATION EASEMENT

THIS INDENTURE made this eighteenth day of March, 1980, by and between Cranbrook Associates, a corporation organized and existing under the laws of the State of Maine and having a place of business in Cape Elizabeth in the County of Cumberland and State of Maine, hereinafter referred to as the Grantor, and the Town of Cape Elizabeth, a governmental body having its principal office at Ocean House Road, Cape Elizabeth, Cumberland County, Maine, hereinafter referred to as the Grantee.

### WITNESSETH:

WHEREAS, by Act of the State of Maine Legislature, Title 33, Maine Revised Statutes, 1964, as amended, Sections 667 and 668, conservation restrictions in the form of conservation easements were recognized and defined; and

WHEREAS, an Act of the State of Maine Legislature, Maine Revised Statutes, 1964, as amended, (Title 30, Sections 3851 and 3801) provide for the establishment of Conservation Commissions and authorizes such Commissions to receive gifts, and to acquire land and conservation easements in the name of the municipality; and

WHEREAS, the Grantee at a Council Meeting held on April 26, 1971 by vote of its Legislative Body, established the Town of Cape Elizabeth Conservation Commission; and

WHEREAS, the Grantee has determined that for the preservation of the open space and scenic values of the Town of Cape Elizabeth, it is in the public interest to acquire a Conservation Easement over the land hereinafter described; and

WHEREAS, the Grantor and the Grantee recognize and acknowledge a common purpose to conserve, protect, and prevent the use or development of the land hereinafter described in any manner which would conflict with the maintenance of the land in its predominantly natural, open and scenic condition; and

WHEREAS, the Grantee at a Council Meeting held on February 11, 1980, by vote of its Legislative Body, was authorized to accept a conservation easement as set forth herein for the purpose of establishing an open area over certain real property (hereinafter referred to as the "Property") of which the Grantor

portion of a  
is the owner in fee, consisting of a parcel of land located in the Town of Cape Elizabeth, in Cumberland County, Maine, described in a deed from Margaret E. Jenness, Henry G. Beyer II and Edmund B. Beyer to the Grantor, dated December 27, 1979, and recorded in Book 4549, Page 151 of the Cumberland County, Maine, Registry of Deeds, described in Exhibit "A" attached hereto and made a part hereof.

NOW, THEREFORE, the Grantor, for and in consideration of the facts above recited and of the covenants herein contained and as an absolute and unconditional gift, does hereby freely give, grant, and convey unto the Grantee, its successors and assigns forever, a Conservation Easement or Restriction in perpetuity over that portion of the parcel of land described in said Exhibit "A" within sixty (60) feet of the center line of that portion of Pond Cove Brook which crosses said parcel of land. Land within sixty (60) feet of the center line of Pond Cove Brook is hereinafter called the "Property." Said Conservation Easement or Restriction in perpetuity over the Property consists of the following: (1) the right of public view of the Property from off the Property in its scenic, natural, open and wooded condition; (2) the right of the Grantee, in a reasonable manner and at reasonable times, to enter and inspect the Property; (3) the right of the Grantee to enforce by injunction or proceedings at law or in equity, the covenants hereinafter set forth; and in furtherance of the foregoing affirmative rights, the Grantor makes the following covenants on behalf of itself, its successors and assigns, which shall run with and bind the Property in perpetuity:

1. The Property shall be used for conservation purposes only. No commercial, industrial, or mining activities shall be permitted on the Property. No structures of any kind, temporary or permanent, shall be located on the Property.

2. No alteration shall be made to the surface of the Property other than that caused by the forces of nature, unless such alteration is approved in advance and in writing by the Grantee or its authorized representative.

In consideration for the rights herein granted, the Grantee by its acceptance hereof, hereby agrees to undertake the protection of the Property in accordance with the conditions set forth above.

CRANBROOK ASSOCIATES

By Edmund B. Beyer  
Vice President

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed and sealed with its corporate seal by Edmund B. Beyer, its Vice President, all as of the day and year first above written.

STATE OF MAINE  
COUNTY OF CUMBERLAND, SS.

March 18, 1980

Personally appeared the above named Edmund B. Beyer, Vice President of Cranbrook Associates and acknowledged the above instrument to be the free act and deed of Cranbrook Associates and his free act and deed in his said capacity.

Before me,

Linda Haskele

Notary Public

LINDA HASKELE  
NOTARY PUBLIC  
MY COMMISSION EXPIRES APRIL 26, 1982

The Town of Cape Elizabeth Conservation Commission does hereby accept on behalf of the Town of Cape Elizabeth the above and foregoing Conservation Easement.

Dated: , 1980

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Without limiting the generality of the foregoing, billboards, trailers or mobile homes are specifically prohibited on the Property, provided however, there is retained in the Grantor, its successors and assigns, the right to temporarily post the Property to control unauthorized use.

4. The cutting of standing timber on the Property shall not be permitted, provided however, there is retained in the Grantor, its successors and assigns, the following rights:

- A. The right to clear and restore forest cover that is damaged or disturbed by the forces of nature;
- B. The right to gather, use or remove dead wood; and
- C. The right to prune or selectively cut trees as recommended by a registered professional forester in order to maintain a healthy stand of trees.

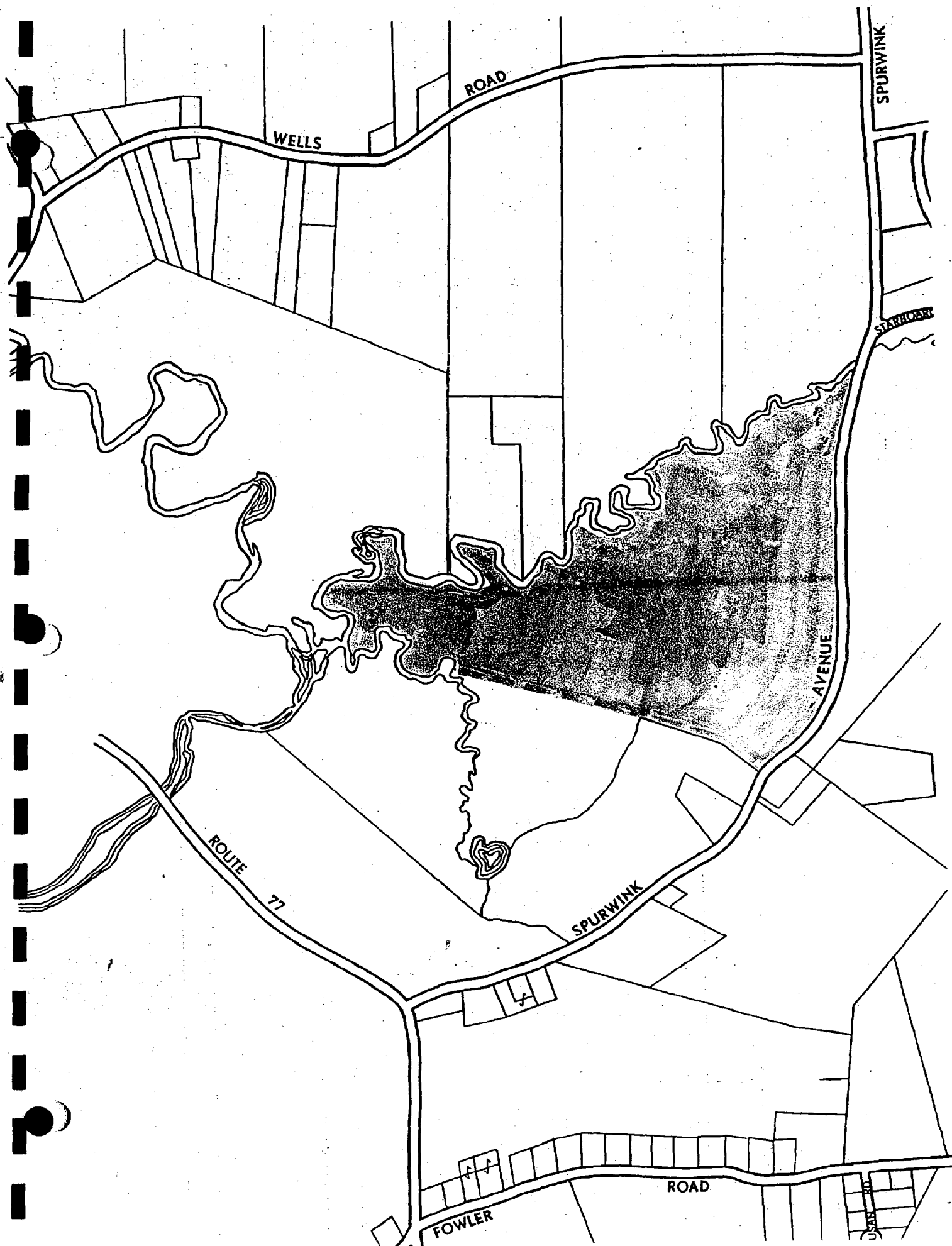
5. Any modification, alteration, construction or reconstruction of any waste disposal system shall be done in conformance with the requirements of the Department of Health and Welfare and the Department of Environmental Protection or successor agencies and in a manner that will prevent any discharge of untreated waste into waters located on or about the Property.

TO HAVE AND TO HOLD the said Conservation Easement or Restriction unto the said Grantee and its assigns forever.

It is the intention of the parties hereto that the grant of easements and covenants herein shall be construed as "conservation restrictions" as said term is defined in Section 667 of Title 33 of the Revised Statutes of the State of Maine, 1964, as amended, and that all of the provisions of Section 668 of said Title shall be binding upon the Grantor, its successors and assigns, and upon the Property, and shall inure to the benefit of the Grantee, its successors and assigns. Should it be necessary or convenient at any time in the future in connection with any action of the Grantee to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to this Conservation Easement, the agreement or approval of the owner or owners of a majority interest in the Property, at any time, shall be deemed to be the agreement or approval of all the owners of the Property.

TOWN POORFARM





PERKINS, THOMPSON, HINCKLEY & KEDDY  
ATTORNEYS AND COUNSELLORS AT LAW

ONE CANAL PLAZA  
P. O. BOX 426

PORTLAND, MAINE 04112

FRANKLIN G. HINCKLEY  
CASPAR F. COWAN  
ROYDEN A. KEDDY  
CHARLES P. BARNES II  
JAMES R. FLAKER  
PETER G. RICH  
THOMAS SCHULTEN  
BRUCE E. LEDDY  
OWEN W. WELLS  
DOUGLAS S. CARR  
ANDREW A. CADOT  
D. BROCK HORNBY  
THOMAS G. SITZMANN

LEE D. URBAN  
ANDREW J. LEDDY, JR.  
RICHARD G. MOON  
JOHN R. OPPERMAN

PORTER THOMPSON  
OF COUNSEL

WILLIAM S. LINNELL  
1888-1968  
ELLIOT P. PERKINS  
1889-1976

AREA CODE 207  
TELEPHONE 774-2635

June 26, 1979

Mr. John E. Henchey  
Town Manager  
320 Ocean House Road  
Cape Elizabeth, Maine 04107

Dear John:

Enclosed is a copy of the only record of which I am aware of the 1825 Will of Thomas Jordan, who devised all of his real estate to his widow for life and on her death devised it, consisting of the town farm property extending from Spurwink Marsh to and including the waste disposal area, "to the town of Cape Elizabeth aforesaid in fee and in trust for the poor of said town forever."

At your request, I am also forwarding a copy of this document to Attorney Eric Stauffer.

Sincerely yours,

*Charles*

CHARLES P. BARNES II

cpb/lml  
encl.

cc: Eric P. Stauffer, Esquire

PERKINS, THOMPSON, HINCKLEY & KEDDY

ATTORNEYS AND COUNSELLORS AT LAW

ONE CANAL PLAZA

P. O. BOX 426

PORTLAND, MAINE 04112

WILLIAM S. LINNELL

1885-1968

ELLIOT P. PERKINS

1899-1976

AREA CODE 207

TELEPHONE 774-2635

BANKLIN G. HINCKLEY  
CASPAR F. COWAN  
ROYDEN A. KEDDY  
CHARLES P. BARNES II  
JAMES R. FLAHER  
FLIER G. RICH  
THOMAS SCHULTEN  
BRUCE E. LEDDY  
OWEN W. WELLS  
DOUGLAS S. CARR  
ANDREW A. CADOT  
O. BROCK HORNB  
THOMAS G. SITZMAN

LEE D. URBAN  
ANDREW J. LEDDY, JR.  
RICHARD G. MOON  
JOHN R. OPPERMAN

PORTER THOMPSON  
OF COUNSEL

July 6, 1979

Mr. John E. Henchey  
Town Manager  
320 Ocean House Road  
Cape Elizabeth, Maine 04107

Re: Town Farm Property

Dear Mr. Henchey:

Interest is currently expressed in the private acquisition of a portion of the Town Farm Property for a major medical care facility. More specifically, I understand that there is a proposal that a portion of the Town Farm Property be purchased for construction of a multi-million-dollar medical care facility which would be taxable under the laws of the State. You have indicated that the Town Council will be asked on July 9 to consider the possibility of granting an option for such a purchase, conditioned upon satisfying the requirements for formal authorization of such a conveyance and upon the Town's being able to convey good, clear and marketable title.

We have not actually searched the title to this property, but the major concern regarding title appears to be the terms upon which the Town acquired the property in the 1800s. The source of title is the 1825 Will of Thomas Jordan, late of Cape Elizabeth, which ordained that:

"whatever portion of my [real] estate shall remain undisposed of at the death of my said wife or on her ceasing to be a widow shall belong to the town of Cape Elizabeth aforesaid in fee and in trust for the poor of said town forever."

In 1825, and long after, the poor did commonly work "town farms" but this manner of benefiting the poor has been discontinued generally, and specifically in Cape Elizabeth, for some time. It is possible to read the devise as granting the Town this real estate "in fee to be held for use by the poor of said town forever", and Thomas Jordan may have had actual use by the poor in mind. Under such an

Mr. John E. Henchey

- 3 -

July 6, 1979

of our research and a discussion with the Attorney General. Assuming that the rental approach is confirmed by further research, the time involved could be as little as one month, whereas application to the Superior Court could take considerably longer since intervention by other persons interested would become a possibility.

I or others in our office familiar with this question would be happy to attend the July 9 Town Council meeting to discuss this further with the Town Council, or to assist in whatever other way you might desire.

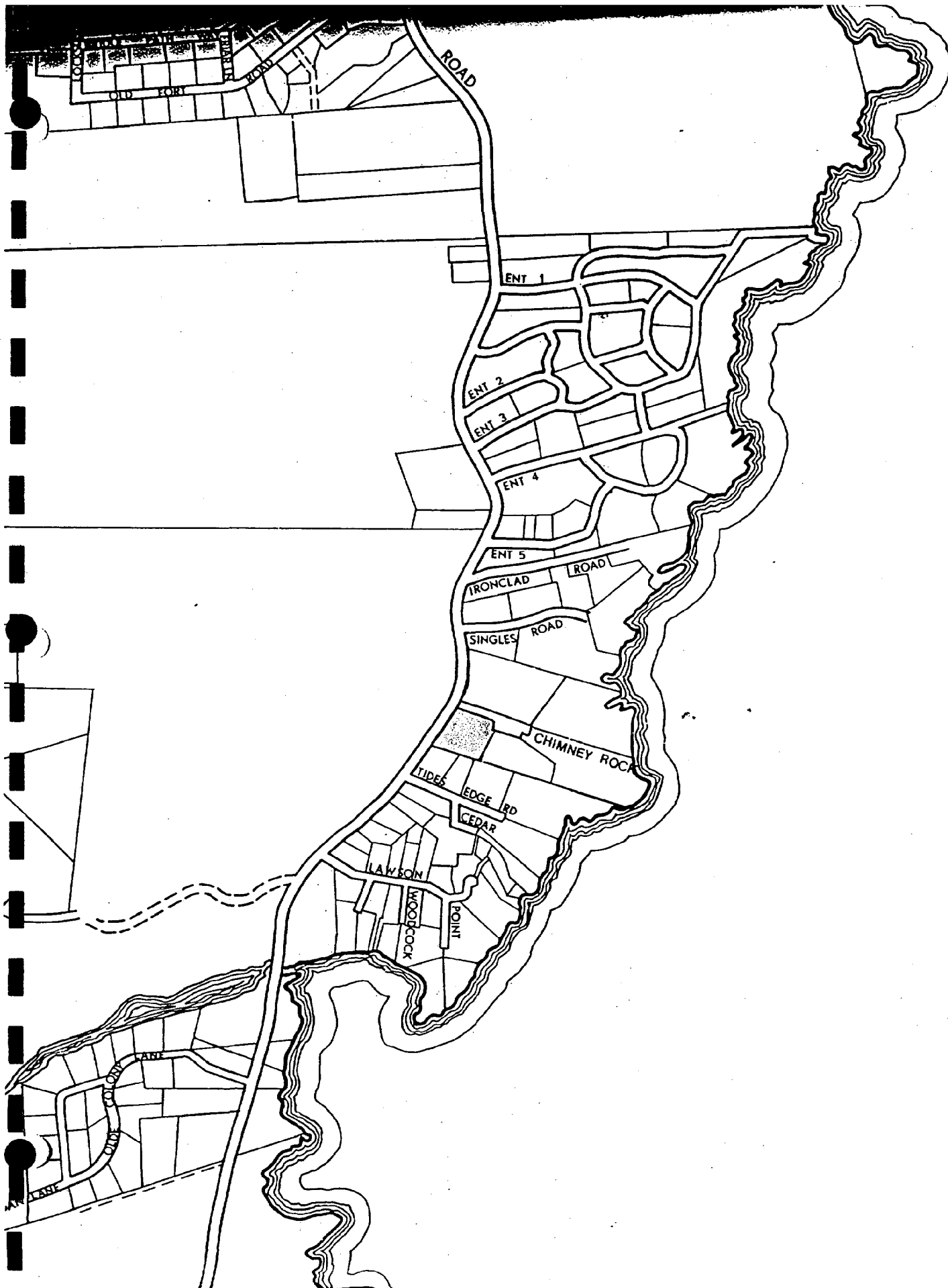
Sincerely yours,

*Charles P. Barnes II*

CHARLES P. BARNES II

cpb/lml

SCHWARTZ & NELSON



64

Release granted this 26th day of December, 1979, from Frederic N. Schwartz, Louise R. Sullivan, Brian Dorsk, Hillary Dorsk, Edward V. Drinan, Jr., and Janice E. Drinan, all of the Town of Cape Elizabeth, County of Cumberland and State of Maine, to the Town of Cape Elizabeth, a municipal corporation, having its municipal offices at 320 Ocean House Road, in said Cape Elizabeth.

For One Dollar (\$1.00) and other valuable considerations, the receipt whereof is hereby acknowledged, Frederic N. Schwartz, as the owner of Lot 3 as shown on Plan entitled "Plan of Land in Cape Elizabeth, Maine, for Bruce D. Nelson and Frederic N. Schwartz" dated July 12, 1976 and recorded in the Cumberland County Registry of Deeds in Plan Book 114, Page 50, Louise R. Sullivan, as the owner of Lot 4 as shown on said Plan, Brian D. and Hillary Dorsk as the owners of Lot 2 as shown on said Plan, and Edward V. Drinan, Jr. and Janice E. Drinan as the owners of Lot 1 as shown on said Plan, do hereby, for themselves, their heirs and assigns forever, release the said Town of Cape Elizabeth from compliance with the conditions numbered 1, 2 and 3 as shown on said Plan entitled "Plan of Land in Cape Elizabeth, Maine, for Bruce D. Nelson and Frederic N. Schwartz", dated July 12, 1976.

IN WITNESS WHEREOF, the said Frederick N. Schwartz, the said Louise R. Sullivan, the said Brian Dorsk, the said Hillary Dorsk, the said Edward V. Drinan, Jr., and the said Janice E. Drinan have hereunto set their hands and seals the date and year first above written.

Frederic N. Schwartz

Louise R. Sullivan

Brian Dorsk

Hillary Dorsk

Edward V. Drinan, Jr.

Janice E. Drinan

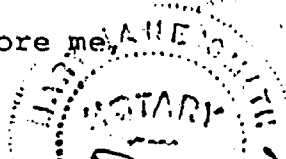
PET:

THIS IS NOT THE  
RIGHT ORDER, BUT  
IT'S AUTHENTIC! J.

JANUARY 27 1980

Personally appeared the above named Hillary Dorsk and  
acknowledged the above instrument to be her free act and deed.

Before me,



Mary Dorsk  
Notary Public

~~Justice of the Peace~~

MY COMMISSION EXPIRES  
OCTOBER 14, 1984

STATE OF MAINE

CUMBERLAND, ss.

REGISTRY OF DEEDS

Received at 12 H 44 P M on JAN 9 1980 and recorded in

Book 4552 Page 64

ATTEST

Edward J. Austin Register





## TOWN OF CAPE ELIZABETH

TOWN HALL  
320 OCEAN HOUSE ROAD  
CAPE ELIZABETH, MAINE 04107

January 7, 1980

Frederick N. Schwartz, D.O.  
616 Forest Avenue  
Portland, Maine

Dear Doctor Schwartz:

On behalf of the members of the Cape Elizabeth Conservation Commission, I would like to express our great and sincere appreciation for your recent contribution of a significant parcel of land to the Town of Cape Elizabeth. It is, in fact, one of only two remaining open space areas on the easterly side of Shore Road between Ocean House Road and the South Portland line. It abuts our proposed Greenbelt Corridor and lies along a road classified as having high scenic value. Through your foresight and generosity, it has now been preserved in perpetuity.

Sincerely,

Peter W. Rand, M.D.  
Chairman  
Cape Elizabeth  
Conservation Commission

PWR/1

cc: Mr. John Henchey  
Mr. Henry C. Adams  
Mrs. Mary McGushin

SUBJECT TO THE  
SHALL RUN WITH

A PRIVATE ROAD AND  
IS 2,3,4,5 AS SHOWN  
EMITTED TO THE TOWN  
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AND THE ROAD UP TO  
IN THE ROAD TO THE  
SAID OWNERS SHALL  
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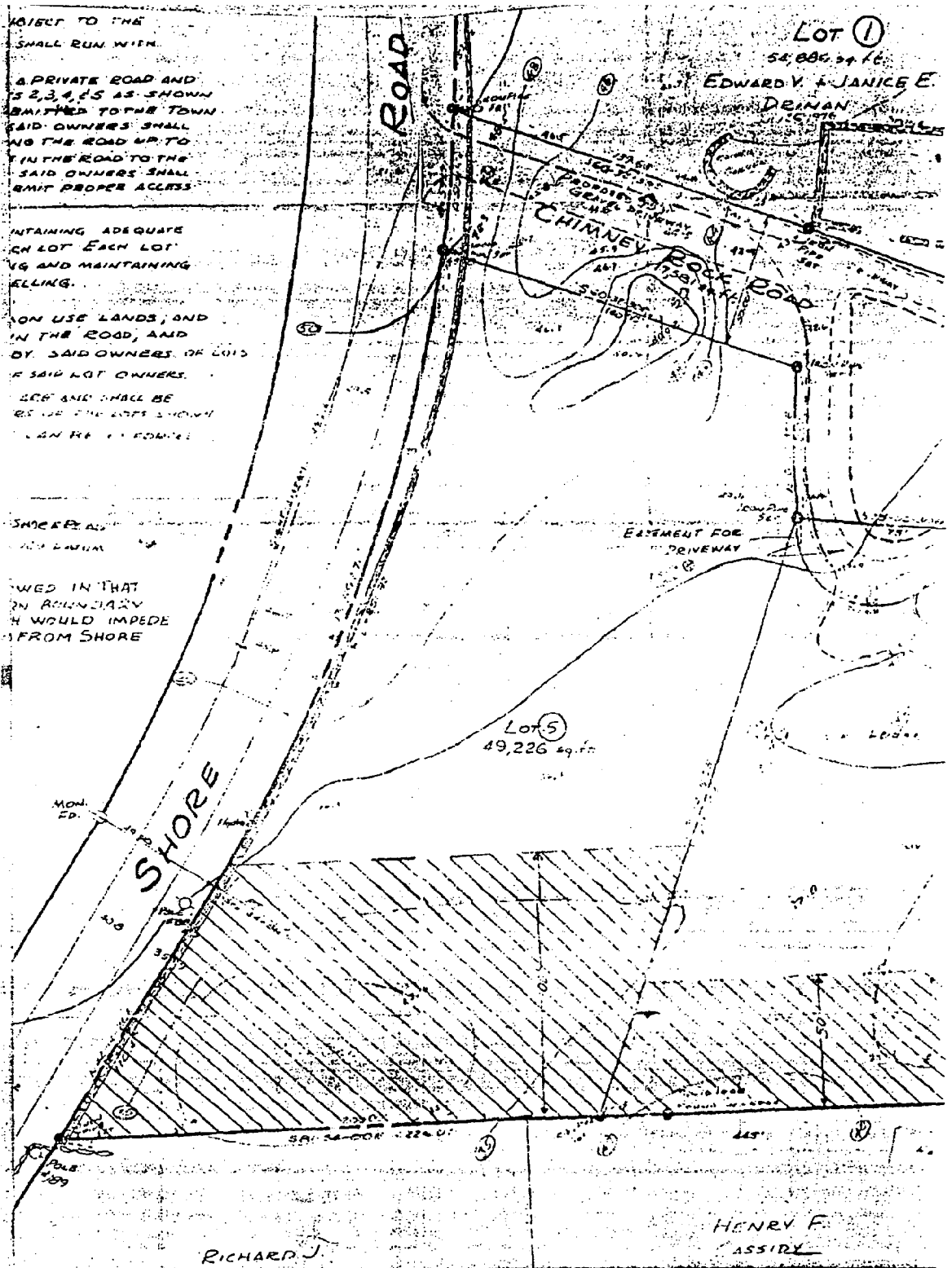
CONTAINING ADEQUATE  
ON LOT EACH LOT  
VG AND MAINTAINING  
ELLING.

ON USE LANDS, AND  
IN THE ROAD, AND  
BY SAID OWNERS OF LOTS  
OF SAID LOT OWNERS.

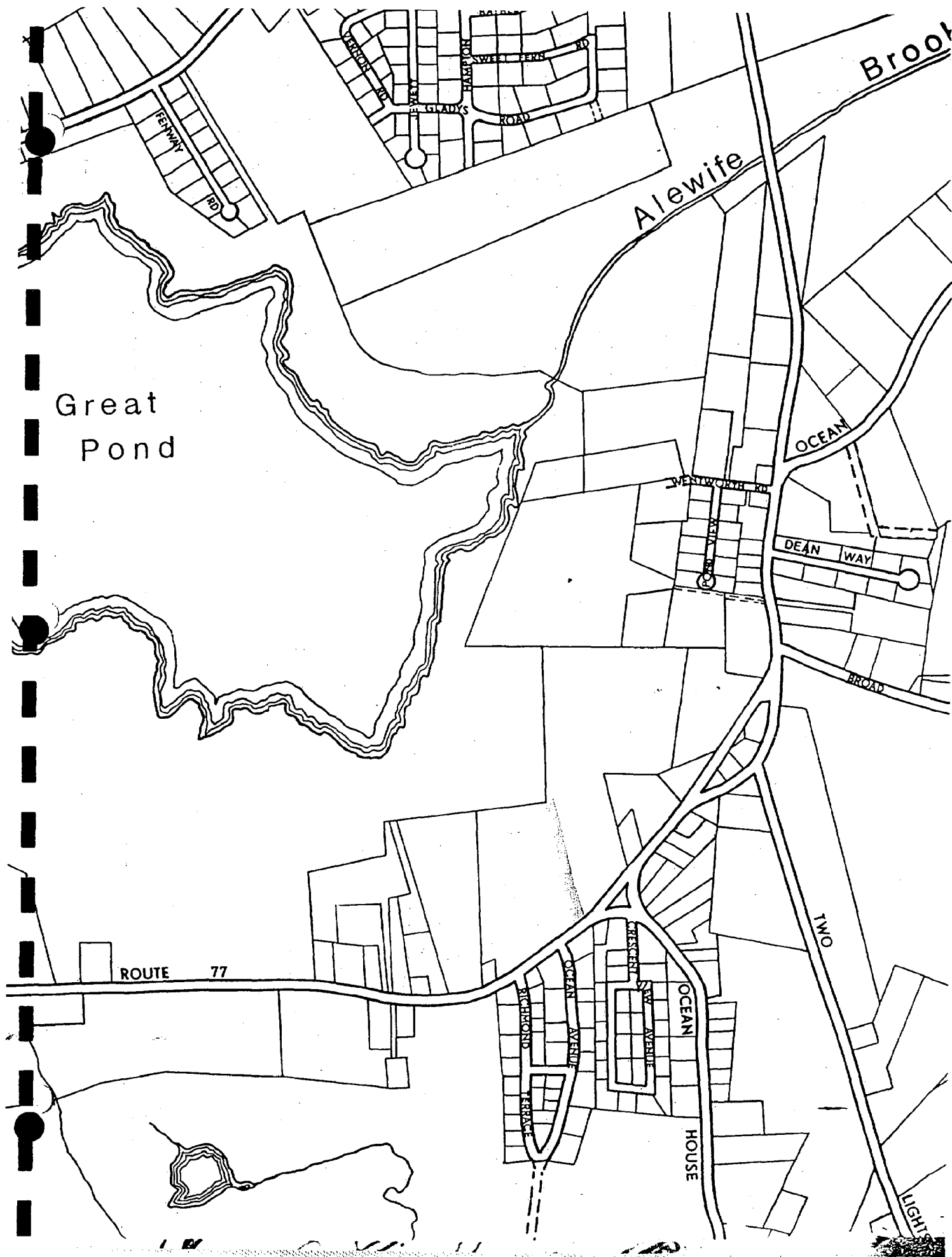
AND SHALL BE  
BE THE LOT SHOWN  
CAN BE A FORMER

SHORE

WED IN THAT  
ON BOUNDARY  
H WOULD IMPEDE  
FROM SHORE



**OTTAWA SPRINGS**



MAINE STATUTORY SHORT FORM  
KNOW ALL MEN BY THESE PRESENTS,

That we, Douglas A. Tinsman, of Cape Elizabeth, and David W. Pickering, *T0494,95R*

of South Portland, County of Cumberland, State of Maine, both being married, for consideration paid, grant to Town of Cape Elizabeth,

of Cape Elizabeth, County of Cumberland and State of Maine whose mailing address is 320 Ocean House Road, Cape Elizabeth, Maine 04107, *17, + 25 Bowery Beach Rd.*

with WARRANTY COVENANTS, the land in Cape Elizabeth, County of Cumberland, State of Maine, described as follows:

The perpetual right to enter upon a strip of land thirty (30) feet in width on the northwesterly side of Bowery Beach Road in the Town of Cape Elizabeth, County of Cumberland and State of Maine, lying partially on Lot No. 2 and partially on Lot No. 3 as shown on Plan of Ottawa Springs Subdivision made by Land Use Consultants dated December 9, 1983, approved by the Cape Elizabeth Planning Board on December 20, 1983, and recorded in the Cumberland County Registry of Deeds in Plan Book 140, Page 43, to which Plan reference is hereby made for the location of said strip of land, and continuing from the northwesterly sideline of said Lot No. 3 on a center line course of North 64° 02' 20" West for a further distance of eighty-five (85) feet, and to maintain and repair within said strip of land facilities for the drainage of surface waters, PROVIDED, HOWEVER, that the Town of Cape Elizabeth by acceptance of this deed does not assume any responsibility for the construction, maintenance and repair of said drainage facilities, nor does it relieve the grantors from any obligations or restrictions imposed by the Planning Board in its approval of the Ottawa Springs subdivision as set forth above. Reference is hereby made to a certain plan entitled "Ottawa Springs, Final Drainage Plan" made by Land Use Consultants dated November 21, 1983.

Being a portion of the premises conveyed to the Grantors by Alan J. Levenson, et al., by deed dated September 12, 1983 and recorded in said Registry of Deeds in Book 6272, Page 318.

And Sandra J. Tinsman and Margarita S. Pickering respective wives of Douglas A. Tinsman and David W. Pickering join as

granted  
rights

WITNESS our hands and seals in  
month of January 1984

Signed, Sealed and Delivered  
in presence of

Robert B. Dennison, Jr.  
(To All)

Douglas A. Tinsman  
Douglas A. Tinsman

Sandra J. Tinsman  
Sandra J. Tinsman

David W. Pickering  
David W. Pickering

Margarita S. Pickering  
Margarita S. Pickering

State of Maine  
County of Cumberland, ss.

January 24, 1984

Then personally appeared the above named Douglas A. Tinsman  
and David W. Pickering and acknowledged the foregoing instrument  
to be their free act and deed.

Before me,

Robert B. Dennison, Jr.  
Notary Public

Attorney at Law

ROBERT B. DENNISON, JR.  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES MAY 12, 1990

SEAL

FEB 3 1987

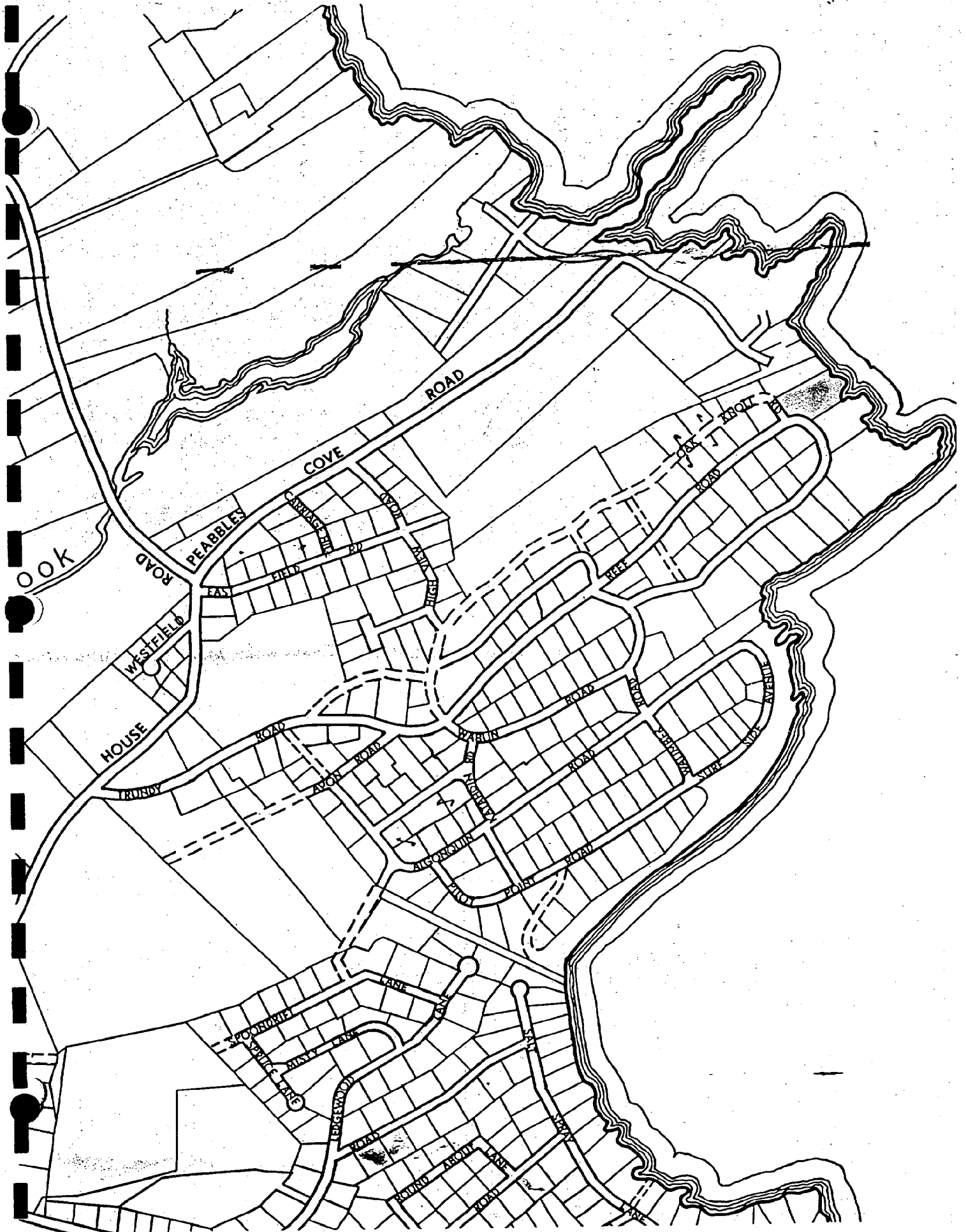
James J. Walsh

**CAPE ELIZABETH  
LAND TRUST  
LAND/EASEMENTS**

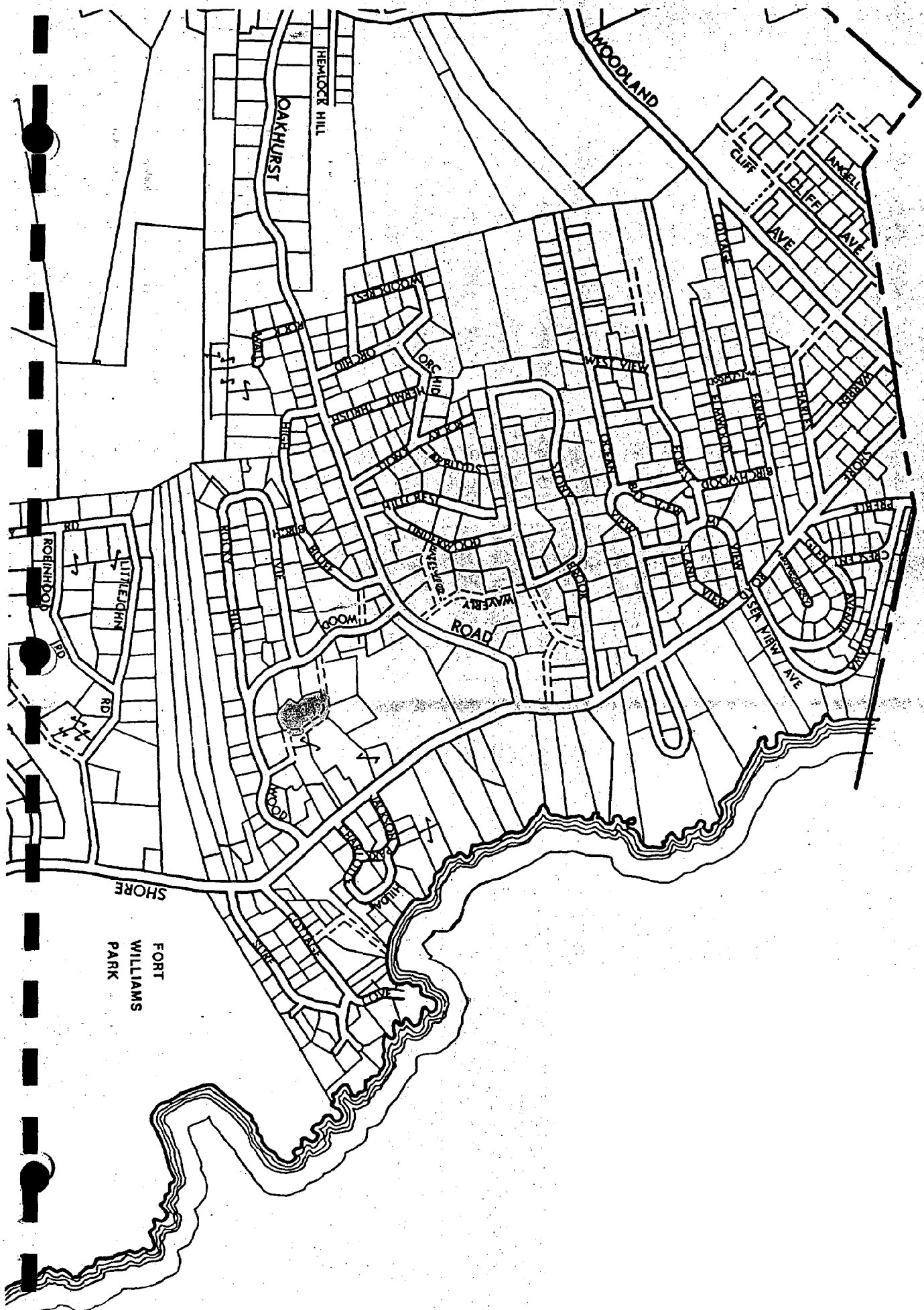
**CAPE ELIZABETH  
LAND TRUST  
LAND/EASEMENTS**



REEF ROAD



**WOOD ROAD QUARRY**



073388

SHORT FORM QUITCLAIM DEED

Joseph H. Groff, III and Christine M. Groff of 49 Wood Road, Cape Elizabeth, Maine, FOR CONSIDERATION PAID, grant to the Cape Elizabeth Land Trust, Inc. with QUITCLAIM COVENANTS, the following described real property located in Cape Elizabeth, Cumberland County, Maine:

All of our right, title and interest in and to a certain lot or parcel of land situated in the Town of Cape Elizabeth, County of Cumberland and State of Maine, and described as follows: Cape Cottage Woods, Lots 108-109-110-111 and 112, Quarry lots, Val. 300.00.

Reference is made to Tax Collector's lien certificate for the year 1948, recorded on August 5, 1949 in Cumberland County Registry of Deeds in Book 1965, Page 37. Said premises are also shown as Lot 55 on Map U-4 of the Assessor's Plans of the Town of Cape Elizabeth, made by Wright & Pierce, C.E., as of April 1, 1965 and on file in the Town Office.

Said lots numbered 108 through 112 inclusive are also shown on a certain unrecorded plan of Cape Cottage Woods made by Ralph P. Cummings, Civil Engineer, on September 14, 1937.

Also conveying the right, in common with others, to use a twenty foot right of way known as Quarry Road, adjoining the southerly sideline of land formerly of Kate Wheeler Payson.

Being a portion of the premises conveyed to the Grantors herein by deed of David F. Wender and Marcia K. Wender dated November 29, 1982 and recorded at the Cumberland County Registry of Deeds in Book 5072, Page 180.

WITNESS our hands and seals this 18th day of December, 1986

WITNESS:

*[Signature]*  
.....  
*[Signature]*  
.....

*[Signature]*  
.....  
Joseph H. Groff, III  
*[Signature]*  
.....  
Christine M. Groff  
*[Signature]*

DK7564PG0264

State of Maine  
County of Cumberland, ss.

*December 18*, 1986

PERSONALLY APPEARED the above-named Joseph H. Groff, III and acknowledged the foregoing instrument to be his free act and deed.

Before me,

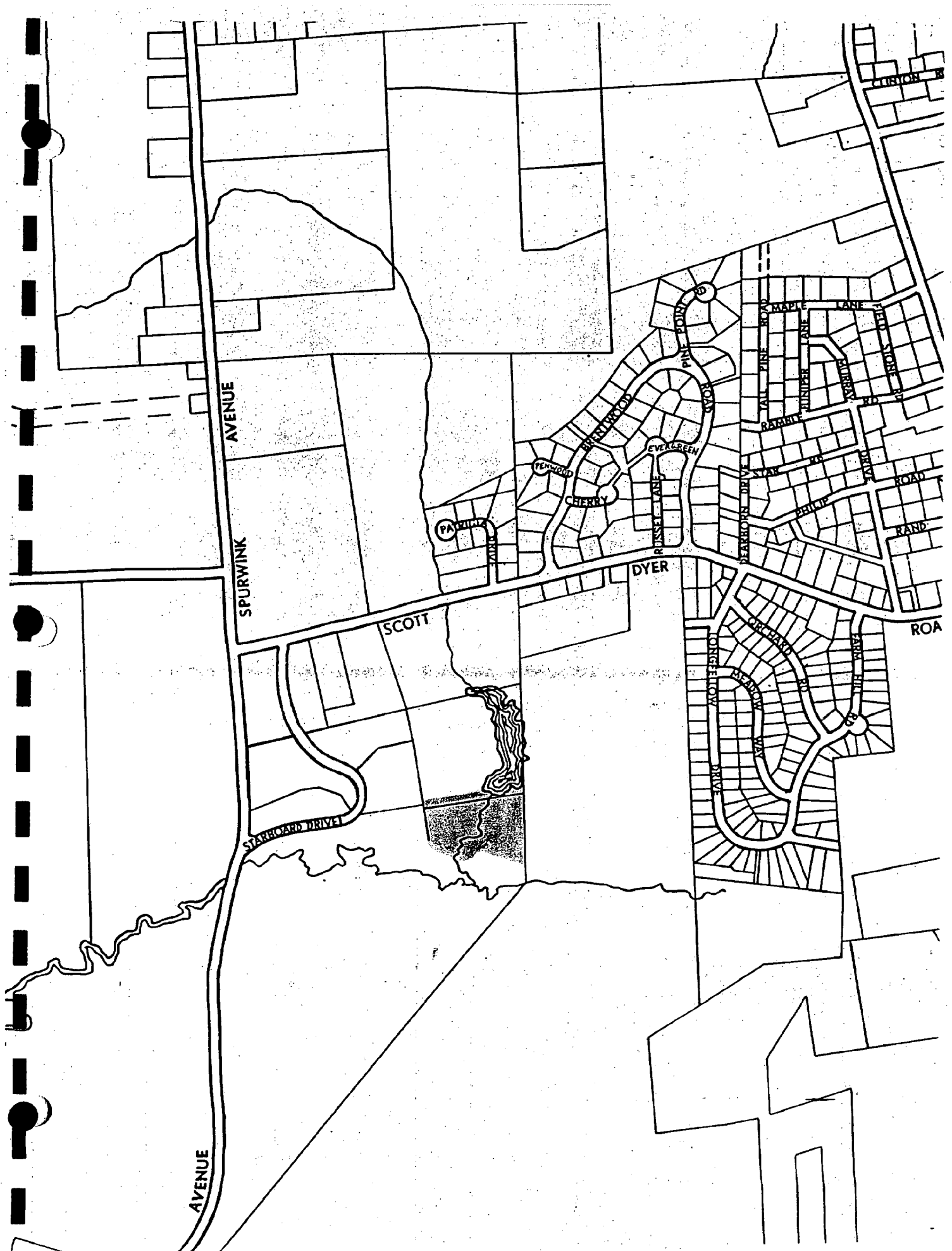
SEAL

*Jean K. Todd*  
.....  
Notary Public/~~Attorney at Law~~  
*JEAN K. TODD*  
.....  
(print name)

MY COMMISSION EXPIRES  
MAY 29, 1988

RECEIVED  
RECORDED REGISTRY OF DEEDS  
1986 DEC 30 PM 2:28  
CUMBERLAND COUNTY  
*James J. Walsh*

I. ALAN BALFOUR





NOTE-O-GRAM<sup>®</sup>

THE DRAWING BOARD • BOX 305 • DALLAS, TEXAS 75221

ALAN BALFOUR JR.

P.O. BOX 2439 • SOUTH PORTLAND, MAINE 04106 • PHONE (207) 758-7611

04104

871-8660

MESSAGE

REPLY

Peter W. Rand, M.D.  
Research Dept.

Mc. Medical Center, Portland, Me. 04102

12/18/86

DATE

DATE

Dear Peter -

Enclosed is copy of proposed deed  
together with copies of the plot which  
I would be willing to deed to the  
Cape Elizabeth Trust,

If I should do this it would  
have to be before 12/31/86 that your  
organization accepts and records the  
deed. Will await hearing from you.

Very truly

Alan Balf

IRS EMPLOYER I.D. #

22-2736834

SIGNED

Form NIN73 © The Drawing Board, Inc., Box 305, Dallas, Texas 75221

INSTRUCTIONS TO SENDER:

INSTRUCTIONS TO RECEIVER:

KEEP YELLOW COPY. 2. SEND WHITE AND PINK COPIES INTACT.

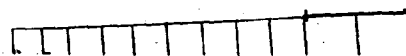
1. WRITE REPLY. 2. DETACH STUB, KEEP PINK COPY, RETURN WHITE COPY TO SENDER.

1.81 Acres

16

14

12



072638

Quitclaim Deed with Covenant  
Maine Statutory Short Form

I, I. ALAN BALFOUR of Falmouth, Cumberland County, and State of Maine, for consideration paid grant to CAPE ELIZABETH LAND TRUST of Cape Elizabeth, Cumberland County, and State of Maine, with Quitclaim Covenants the land in Cape Elizabeth, Cumberland County, and State of Maine described as follows:

Beginning at the southwest corner of land now or formerly of John Dearborn and the easterly line of land formerly of the Grantor (now known as Cape Colonial Village);

Thence easterly (approximately South 89° 34' East) along said land of Dearborn to an iron fence post and land now or formerly of Stanley Jordan;

Thence southerly along said land of Jordan to the marsh;

Thence westerly and northerly along said marsh to the point of beginning.

Containing 3.46 acres, more or less, and being all the remaining land I have claim or title to east of Cape Colonial Village.

Subject to a sewer easement Forty feet (40') in width granted to the Town of Cape Elizabeth by deed dated December 15, 1975.

Being a portion of that property granted to Grantor herein by deed of Land Development Corporation dated November 28, 1966 and recorded in the Cumberland Registry of Deeds at Book 2981, Page 233.

WITNESS, my hand and seal this 22<sup>nd</sup> day of December 1986.

Patricia M. McKeon  
Witness

I. Alan Balfour  
Grantor - I. Alan Balfour

State of Maine,  
Cumberland, SS

Personally appeared before me, the above named I. Alan Balfour, acknowledged the foregoing instrument to be his free act and deed, and subscribed same.

Before me,

12/22/86  
Date

Patricia M. McKeon  
~~Attorney At Law~~ / Notary Public

RECEIVED  
RECORDED REGISTRY OF DEEDS

1986 DEC 29 PM 1:15

CUMBERLAND COUNTY

James J. Walsh

PATRICIA M. McKEON  
NOTARY PUBLIC, MAINE  
MY COMMISSION EXPIRES JULY 13, 1993

N

3.46 ACRES

MARSH

40 FT. SEWER EASEMENT

PLAN OF LAND

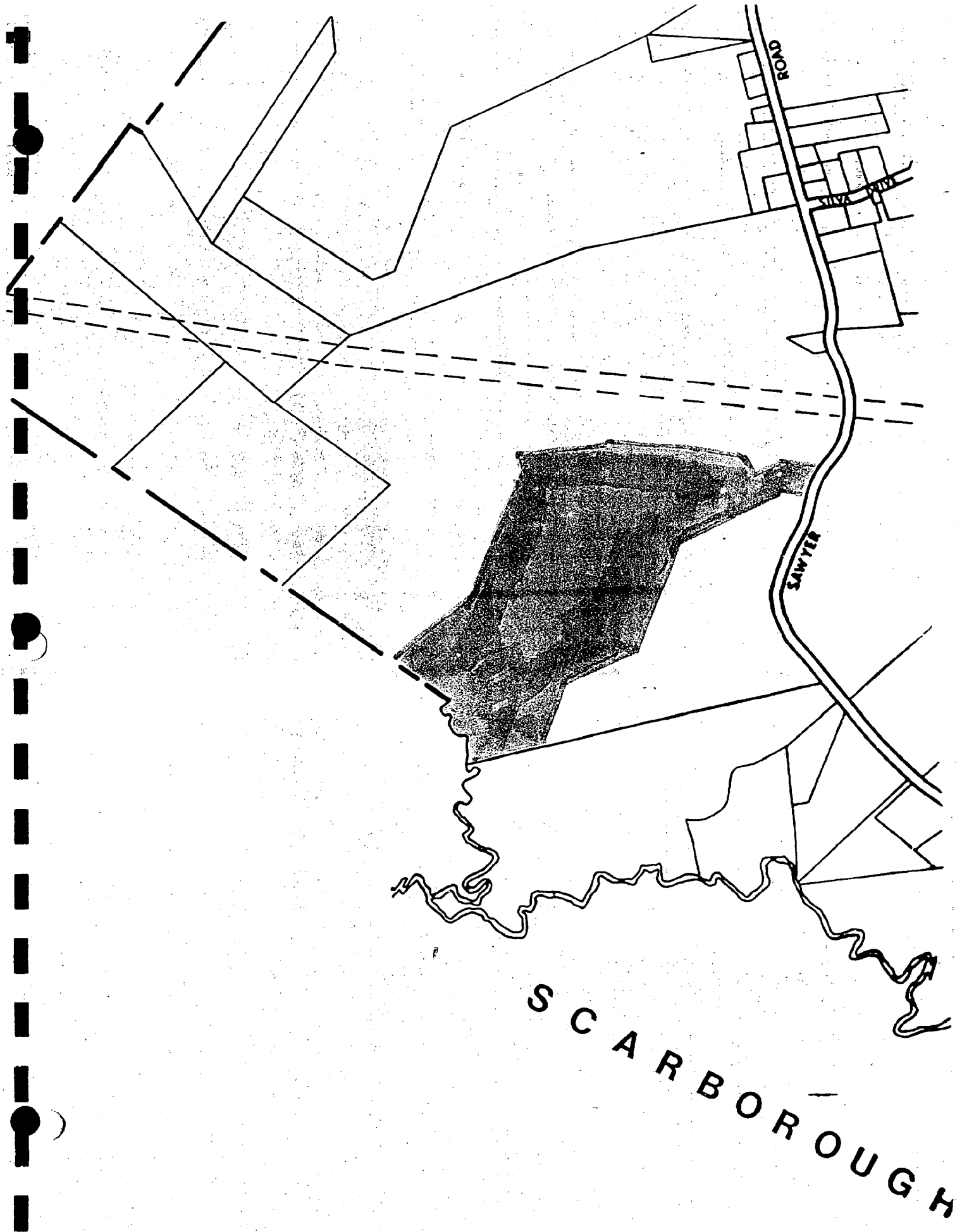
NOTE: For further detail see  
H.I. & E.C. Jordan plan  
for I. Alan Balfour-Cape  
Colonial Village dated  
November 1978 with cross  
reference to plan no.  
2035703.

STARBOARD DRIVE

SCALE: 1" = 100'

HENNESSY ASSOCIATES

WEINSHCENK



## EASEMENT DEED AND INDENTURE

THIS INDENTURE made by and between KFOURY-WEINSCHENK, a Maine corporation of Portland, Maine, (hereinafter referred to as the "Grantor") and CAPE ELIZABETH LAND TRUST, a Maine non-profit corporation with offices in Cape Elizabeth, Maine, (hereinafter referred to as the "Holder").

### W I T N E S S E T H:

WHEREAS, this Easement Deed and Indenture is created pursuant to Title 33, Maine Revised Statutes, 1964, Sections 476 through 479-B, inclusive, as amended; and

WHEREAS, this Easement Deed and Indenture is also created pursuant to the Internal Revenue Code of 1986 (the "Code") at Title 26, U.S.C.A., Section 170(h)(1)-(6), as amended; and

WHEREAS, the Holder represents to Grantor that it is a non-profit corporation as defined by Title 33, Maine Revised Statutes Annotated, 1964, Section 476(2) B, as amended, and is a Qualified Organization under Section 170(h)3 and an Exempt Organization under Section 501(c)(3) of the Code, as amended: to wit: a publicly funded, non-profit corporation, authorized to accept lands, easements, and buildings for the purpose of preserving and protecting natural scenic and open space values of real property; and

WHEREAS, the Grantor holds title to certain real property situated westerly of Sawyer Road in the Towns of Cape Elizabeth and Scarborough, Cumberland County, Maine as described in a deed from Philip M. Hall and Rozanne L. Hall to Grantor dated August 1, 1984 and recorded at Book 6554, Page 276 in the Cumberland County Registry of Deeds and indicated on the plot plan entitled "Elizabeth Farms Prout Manor" prepared by R.P. Titcomb Associates, Inc., dated May 8, 1986, a reduction of which is attached hereto as Exhibit B, the original of which is recorded at the Cumberland County Registry of Deeds in Plan Book , Page (the "Plan"); and

WHEREAS, a portion of said property consisting of Twenty-eight and one-half (28.5) acres more or less of meadow with frontage on Sawyer Road and approximately Seven Hundred Feet (700') of frontage on the Spurwink River, as described in Exhibit A attached hereto and made a part hereof by reference (the "Protected Property") remains in a substantially undeveloped, open and natural state, provides scenic enjoyment to the general public when viewed from the public waters of the

Spurwink River and the public roadway of Sawyer Road, and has significant scenic, aesthetic, scientific and ecological value; and

WHEREAS, pursuant to the grant of this easement to Holder the Grantor desires to preserve in perpetuity the Protected Property's value as a scenic and natural area and habitat for flora and fauna with an associated right for members of the public to gain access to the Protected Property and over the Protected Property to the waters of the Spurwink River for quiet, passive recreational uses which shall not conflict with the Protected Property's natural value on the terms hereinafter set forth; and

WHEREAS, the Spurwink River is subject to considerable development pressure; and

WHEREAS, any significant change in the natural, scenic, and open condition of the Protected Property would have an adverse effect on the opportunity for the public to enjoy visual and physical access to the Spurwink River landscape; and

WHEREAS, the Spurwink River is unique in being a relatively intact coastal ecosystem and, as such, is an unusually important habitat for birds, fishes, marine and terrestrial mammals, and flora; and

WHEREAS, the Grantors and Holder recognize the uniqueness of the Protected Property as a Maine coastal property and the scenic, aesthetic, and special character of the Spurwink River region in which the Protected Property is located, have the common purpose of conserving the natural values of the Protected Property and the access to the Protected Property and the related river vista by the conveyance of a Conservation Easement on, over and across the Protected Property, which shall benefit, protect and conserve the natural values of the Protected Property, conserve the scenic, aesthetic and ecological values of the Spurwink River region, conserve and protect the animal and plant populations, and prevent the use or development which would conflict with its natural, scenic, and open condition or with the access to and scenic enjoyment of the Protected Property by the general public;

NOW THEREFORE, in consideration of the foregoing and the covenants herein contained, the GRANTOR HEREBY GRANTS to the HOLDER, its successors and assigns, as an absolute and unconditional gift, forever and in perpetuity:

1. A Conservation Easement in gross over the Protected Property on the terms and conditions set forth herein (the "Conservation Easement");

2. A right of pedestrian access over pathways approximately but not less than five feet (5) in width over other land of the Grantor adjoining the Protected Property, said pathways to be located as shown on the Plan for the purpose of utilizing the Conservation Easement, subject to the reserved rights of the Grantor set forth herein, including the right of relocation of said pedestrian pathways at the expense of Grantor, its successors and assigns in order to develop and make use of said adjoining land of the Grantor, which relocation shall be subject to the approval of the Holder which shall not be unreasonably withheld or delayed, provided that for Phase IV as shown on the Plan no such relocation approval need be obtained until the initial location of the Phase IV pathways is finally approved by the Town of Cape Elizabeth's Planning Board (the "Pedestrian Easement");

3. A right of vehicular access in common with others over the streets located on other land of the Grantor adjoining the protected property and a right to park up to three vehicles, which streets and parking area shall be located as shown on the Plan solely for the purpose of utilizing the Conservation Easement, subject to the reserved rights of the Grantor as set forth herein including the right to relocate said streets and parking area at the expense of Grantor in order to develop and make use of said adjoining land of the Grantor, which relocation shall be subject to the consent of the Holder which shall not be unreasonably withheld or delayed, provided that for Phase IV as shown on the Plan no such approval need be obtained until the location of the Prout Place is finally approved by the Town of Cape Elizabeth's Planning Board, and further provided that no rights to utilize said vehicular access may be made until the earlier of December 31, 1993 or the completion of construction on said adjoining land of Grantor (the "Vehicular Easement"); and

4. The right to preclude the construction and maintenance of above-ground structures, buildings and other man-made objects located in the area labelled "View Easement" on the Plan and described on Exhibit A (the "View Easement") which would obstruct the view from Sawyer Road toward the Spurwink River (which "View Easement" area is not part of the Protected Property).

(Collectively the "Easements").

1. Purpose

It is the dominant purpose of these Easements to preserve and protect in perpetuity the natural, open space, scenic, aesthetic and agricultural features and values of the Protected Property. In so doing, it is the purpose of these Easements to foster the continuation of responsible conservation practices



and passive recreational uses.

## 2. Conservation Easement

The affirmative rights conveyed by this Conservation Easement are the following:

A. The right of the Holder to identify, to preserve and to protect in perpetuity the natural, open space and aesthetic features and values and the agricultural and water quality of the Protected Property.

B. The right of the Holder to enter upon and inspect the Protected Property at any time in any manner that will not unreasonably interfere with the permitted uses being made of the Protected Property at the time of such entry, provided that the Grantor shall have the right to designate and change any access over other land of the Grantor.

C. The right of the Public to view the Protected Property from the public waters and the public roadway in its natural, scenic, and open condition, provided herein that nothing shall impair the Grantor's rights to construct and maintain structures on other land of the Grantor.

D. The right of the the public, subject to the terms and conditions hereinafter set forth, to use the Protected Property for day hiking and for access to the Spurrink River; and

E. The right of the Protected Property to be free of any taint, corruption, or pollution of whatever character arising from any use not permitted hereunder.

F. The right of the Holder to enforce by proceedings at law or in equity the covenants herein set forth.

## 3. Use of Protected Property

The Protected Property shall be used for passive recreational and conservation purposes only. No structures (except the dam) presently exist on the Protected Property. No residential, commercial, industrial, quarrying or mining activities shall be permitted on the Protected Property except for: (a) agriculture; (b) private, recreational fishing and shell-fishing; (c) renovation and maintenance of the existing ponds, dam and drainage ditches; (d) drainage of surface and subsurface waters to the Spurrink River in compliance with all applicable federal, state and local regulations; (e) construction and maintenance of up to two open air, outdoor tennis courts and the construction and maintenance of other similar open-air recreational facilities not enclosed by a roof, to be located only on the "recreational area" shown on the Plan (the boundaries of which are described in the attached

Schedule) and landscaped in such a way to the extent possible not to be prominently visible either from Sawyer Road or from the Spurwink River, together with the right to exclude members of the general public from the "recreational area"; and (f) reconstruction and maintenance of a dam at the outlet of the existing pond for the purpose of maintaining the pond level and controlling drainage to the Spurwink River, provided that any such design, reconstruction and operation shall be pursuant to all federal, state and local regulations and be done under the supervision of a registered civil engineer and further provided that the adjacent land be thereafter restored as nearly as possible to the prior undisturbed state. No other structures, campgrounds, or facilities of any nature whatsoever shall be constructed on the Protected Property except as herein provided.

Without limiting the generality of the foregoing, docks, billboards, through roads, trailers, mobile homes, prominent above-ground antennae or apparatus for telecommunications and radar or use of motorized vehicles or aircraft except in an emergency are also specifically prohibited on the Protected Property. There are presently on the Protected Property two ponds and one dam where generally indicated on Exhibit B. No filling, dumping, excavation or other alteration shall be made to the surface of the Protected Property other than that caused by the forces of nature, unless such alteration is approved in advance and in writing by the Holder; provided however, the following rights are EXPRESSLY RESERVED AND RETAINED by the Grantor, its successors and assigns:

A. The right to cultivate land for farming;

B. The right to establish and relocate pedestrian footpaths, parking, and access road from Sawyer Road to the shoreline of the Spurwink River;

C. The right to excavate in connection with the construction, maintenance, replacement and rebuilding of underground water, sewerage, electric, telephone and other utility services related to the residential use of the other adjoining land of the Grantor and the permitted recreational facilities, provided that the Protected Property shall be thereafter restored as nearly as reasonably possible to its prior undisturbed state;

D. The right to prohibit unauthorized use, hunting and fires and to prohibit the possession and consumption of alcohol and/or drugs; and,

E. The right to post the Protected Property to notify the public of the limitations on use of the Easements.

F. The right to advertise the Protected Property for sale or rent.

G. The right to use motorized vehicles on the Protected Property when necessary to exercise the construction and maintenance rights herein reserved by Grantor.

Except as expressly limited herein, Grantor reserves for itself, its successors and assigns, all rights as owner of the Protected Property, including the right to use the Protected Property for all purposes not inconsistent with this grant.

#### 4. Timber Cutting and Vegetation

The destruction or removal of standing timber, plants, shrubs or other vegetation shall not be permitted on the Protected Property, except however, there are retained in the Grantor, its successors and assigns, the following rights:

A. The right to clear and restore forest cover and vegetation that is damaged or disturbed by the forces of nature, or to prevent the spread of disease or fire.

B. The right to gather, use or remove dead wood.

C. The right to prune or selectively thin trees to provide firewood for personal use, and to maintain views from the public roadway.

D. The right to harvest vegetation and mow fields and meadows for aesthetic or agricultural purposes.

E. The right to graze animals in small numbers. The number of such animals, however, must not be such as to produce over-grazing or removal of the vegetative cover so that the bare soil is exposed and subject to erosion.

F. The right to clear land for agriculture, provided that land so cleared shall be at least 200 feet from any point along the annual mean high water level of the Spurwink River.

G. The right to clear vegetation and forest cover as necessary in the construction maintenance, replacement and rebuilding of: (1) the water, sewerage, electric, telephone and other services related to the residential use of the Protected Property and adjoining land of the Grantor, the permitted recreational facilities and the existing easements of record held by Central Maine Power Company and the Portland Water District; and (2) footpaths and access roads permitted hereunder; provided that the adjacent land be thereafter restored, as nearly as possible, to its prior undisturbed state.

#### 5. Waste Disposal

Any modification, alteration, construction, or reconstruction of any waste disposal system shall be done in a manner that will prevent discharge of any waste into the

Spurwink River or any streams on or about the Protected Property that will at all adversely affect the purity of said waters. The dumping of offal, garbage, debris, abandoned equipments, parts thereof, or other waste material on the Protected Property is prohibited.

#### 6. Public Outdoor Recreation

The members of the general public shall have a right and license for use of the Conservation Easement, the Pedestrian Easement and the Vehicular Easement for day use, for hiking, for access to the Spurwink River for fishing and swimming, and for other forms of passive outdoor recreation during the hours of sunrise to sunset, subject to all applicable laws and regulations concerning such activities, provided, however, that no motor vehicles (including recreational vehicles, all terrain vehicles, motorcycles, dirt bikes and snowmobiles) shall be permitted on the Protected Property (except in an emergency and when necessary to accomplish the right reserved by Grantor herein) without the express permission of the Grantor and the Holder, their respective successors and assigns. No camping, tenting, fires or the possession or use of alcohol or drugs shall be permitted on the Protected Property. Neither the Holder or the Grantor, or their respective heirs and assigns, assume any obligation for maintenance or safety of the Pedestrian Easement, the Vehicular Easement or the Protected Property for public use or any liability to the general public for accidents, injuries, acts, or omissions. Notwithstanding the rights and license for public use herein contained, the Grantor reserves for itself, its heirs and assigns, the right to control, by posting or other means the number of persons who may use the Protected Property and Easements at any one time and any use by the public which is destructive (i) to the natural values to be conserved by these Easements, or (ii) to other members of the general public and their non-destructive, quiet use of the Protected Property, or (iii) to the reasonable quiet use and enjoyment of private property by the owners of the Protected Property, by owners of property neighboring the Protected Property, and by other owners of property on the Spurwink River, including the Grantor, its successors, heirs and assigns. Nothing hereunder shall be deemed to dedicate, create or sanction any rights to the public by adverse possession or otherwise, except as expressly set forth herein and the Holder, its successors and assigns shall have the exclusive right to administer, enforce, or agree to any future modification, amendment or release of the Easements, without need for the consent or approval of the public or any entity acting on their behalf.

#### 7. Baseline Data

Holder acknowledges by acceptance of this Easement that Grantor's historical and present use of the Protected Property is compatible with the purposes of this Easement. In order to

establish the present condition of the Property's natural, ecological, wildlife, and aesthetic resources, so as to be able properly to monitor future uses of the Property and assure compliance with the terms hereof, Holder has prepared an inventory of the Property's relevant features and conditions (the "Baseline Data").

The parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other evidence to assist in the resolution of any controversy which arises with respect to the physical condition of the Protected Property as of the date hereof.

8. Monitoring and Enforcement Rights of Holder

The Holder, its successors and assigns, shall make reasonable efforts from time to time to assure compliance by Grantor with all of the covenants and restrictions herein and shall make periodic inspections of the Protected Property. For such inspection and enforcement purposes, the Holder shall have the right of access to the Protected Property at reasonable time and in a reasonable manner provided that the time and manner of such inspection does not unreasonably interfere with the uses of the Protected Property permitted hereunder. Holder shall prepare and keep on file a monitoring report for each such inspection and make such reports available to the Grantor, its successors and assigns.

In the event the Holder becomes aware of an event or circumstance of non-compliance with the terms and conditions herein set forth, Holder shall notify Grantor of such event or circumstance of non-compliance via certified mail, return receipt requested, and demand corrective action sufficient to abate such event or circumstance of non-compliance and to restore the Protected Property to its previous condition. Failure by the Grantor to cause discontinuance, abatement or such other corrective action as may be reasonably demanded by Holder, shall entitle Holder to bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of these Easements to obtain injunctive relief. If such court determines that Grantor has failed to comply with these Easements after notice and reasonable opportunity to cure, Grantor shall reimburse Holder for any reasonable costs of enforcement, including court costs and reasonable attorneys fees, in addition to any other payments ordered by such court provided that such obligation of reimbursement created hereunder shall not be deemed to establish any inchoate lien of any nature on any other land of Grantor nor shall such obligations take priority over the lien of any mortgage or security interest held by an institutional lender. The foregoing limitation shall not restrict the Holder's ability to seek legal and equitable remedies for any breach hereof. These Easements and related rights may be enforced, administered, modified and amended only by the Holder, the Grantor and the

Town of Cape Elizabeth and by no other person except as specified in 33 MRSA Section 478, provided however that only the consent of the Holder and the then owner of the Premises shall be required to amend this Easement Deed and Indenture.

9. Costs and Taxes

Grantor agrees to bear all costs and responsibility of operation, upkeep, and maintenance of the Property, and does hereby relieve, indemnify and hold harmless the Holder therefrom, provided, however, that Grantor shall not be liable for any monitoring and enforcement expenses incurred by Holder except as expressly provided herein. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the Protected Property or on these Easements.

10. Grant in Perpetuity

The terms of the Easements and this Indenture shall bind the Grantor, its successors and assigns forever and the Holder and its successors and assigns and shall be a burden on the Protected Property running with the Protected Property in perpetuity and shall be recorded in the Cumberland County Registry of Deeds. A copy of the restrictions contained in these Easements or an incorporation by reference deed shall be included in any subsequent deed or legal instrument by which Grantor conveys any interest (including a leasehold) in the Protected Property, provided that failure to include the foregoing shall not affect the validity of any future deed, but which conveyance shall be nonetheless subject to the terms of this Easement Deed and Indenture.

11. Holder and Subsequent Transferees

By acceptance of these Easements, the Holder covenants and agrees with the Grantor, its successors and assigns but not as conditions to these Easements or as restraints on alienability: (1) that it will hold these Easements in perpetuity for the purposes for which Holder, its successors and assigns, were organized; (2) that it will not transfer these Easements, except to an entity which as a condition precedent to such assignment agrees that it is willing and able to enforce the rights granted in these Easements, which entity shall also have purposes similar to that of the Holder and which encompass the purposes set forth in these Easements; and (3) that any such transferee shall satisfy the requirements of Section 170(h) (3) of the Internal Revenue Code of 1986, as amended (or successor provisions thereof) and the requirements of Section 476 (2) of Title 33 of the Maine Revised Statutes Annotated of 1964, as amended (or successor provisions thereof). These Easements may not be transferred in any event except with the prior consent of the Grantor, its successors and assigns, which shall not be unreasonably withheld.

12. Miscellaneous

- (a) The fact that any of these prohibited uses, or other uses not mentioned, may become greatly more economically valuable than permitted uses, or that neighboring properties may in the future be put entirely to such non-permitted uses, has been considered by Grantor in granting this Easements. It is Grantor's belief that any such changes will increase the benefit of the continuation of these Easements, and it is the intent of both the Grantor and Holder that any such changes should not be deemed to change conditions permitting termination of this easement.
- (b) The inability to carry on any or all of the above uses, or the unprofitability of doing so, shall not impair the validity of these Easements or be considered grounds to terminate or alter these terms.
- (c) If any provisions of these Easements or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of these Easements and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.
- (d) Should it be necessary at any time in the future in connection with any action of the Holder to obtain the agreement or approval of the Grantor, its successors or assigns, in connection with any matter relating to these Easements, the agreement or approval of the owner or owners of a majority interest in the Protected Property or of any Association organized by Grantor to administer the Protected Property at that time, shall be deemed to be the agreement or approval of all the owners of the Protected Property.

TO HAVE AND TO HOLD the said Easements unto the said Holder and its successors and assigns forever.

IN WITNESS WHEREOF, the said Grantor has set its hand and seal on July \_\_, 1987.

KFOURY-WEINSCHENK

\_\_\_\_\_  
Witness

by: \_\_\_\_\_  
its

The above and foregoing Easement Deed and Indenture is  
HEREBY ACCEPTED AND AGREED TO by the Cape Elizabeth Land Trust,  
Holder as aforesaid, on July \_\_, 1987.

Cape Elizabeth Land Trust

by: \_\_\_\_\_  
its President

Witness \_\_\_\_\_

0441H

STATE OF MAINE  
County of Cumberland, ss.

July \_\_, 1987

Personally appeared the above-named Ric Weinschenk in his  
said capacity, acknowledged the foregoing instrument to be his  
free act and deed, and the free act and deed of said  
corporation.

Before me,

\_\_\_\_\_  
Notary Public/Maine attorney at Law  
Name:

STATE OF MAINE  
County of Cumberland, ss.

July \_\_, 1987

Personally appeared the above-named Nathaniel S. Clifford  
in his said capacity, acknowledged the foregoing instrument to  
be his free act and deed, and the free act and deed of said  
corporation.

Before me,

\_\_\_\_\_  
Notary Public/Maine attorney at Law  
Name:

0441H.04  
6/12/87



CONSENT OF MORTGAGEE

MAINE SAVINGS BANK, holder of a mortgage and security interest covering the Protected Property and the View Easement dated \_\_\_\_\_, 1987 and recorded at the Cumberland County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ does hereby consent to the above and foregoing Easement Deed and Indenture and subordinates its mortgage interest to the right of the Holder to enforce these Easement subject to the limitations set forth therein.

Witness its hand and seal on July \_\_\_, 1987.

MAINE SAVINGS BANK

\_\_\_\_\_  
Witness by: \_\_\_\_\_  
its

STATE OF MAINE  
County of Cumberland, ss. \_\_\_\_\_, 1987

Personally appeared the above-named \_\_\_\_\_ in his said capacity, acknowledged the foregoing instrument to be his free act and deed and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public/Maine attorney at Law  
Name:

0441H.06  
6/12/87

SCHEDULE A

EASEMENT DEED AND INDENTURE

The Conservation Easement:

A Conservation Easement over certain lot or parcel of land located in the Towns of Cape Elizabeth and Scarborough, County of Cumberland, State of Maine, located on the westerly side of Sawyer Road, referred to as the "Protected Property," more particularly bounded and described as follows:

Commencing: at a granite monument at the intersection of the westerly sideline of Sawyer Road at its intersection with the southerly point of the turnout for Prout Place, a private road;

Thence: running North 81 degrees 07 minutes 36 seconds West 185.00 feet to an iron pipe;

Thence: running South 74 degrees 52 minutes 24 seconds West a distance of 896.37 feet to an iron pipe;

Thence: running North 15 degrees 07 minutes 36 seconds West a distance of 328.47 feet to an iron pipe and the southeasterly corner of Lot #29 as shown on said Plan;

Thence: running South 85 degrees 37 minutes 55 seconds West a distance of 260 feet by a southerly sideline of Lots 29 and 28 to an iron pipe and the easterly sideline of Lot #27;

Thence: running South 28 degrees 22 minutes 5 seconds East a distance of 100.00 feet by said easterly sideline of Lot #27 to an iron pipe;

Thence: running South 34 degrees 54 minutes 00 seconds West by the southeasterly sidelines of Lots #27, #26, #25 and #24 a distance of 600.00 feet to an iron pipe;

Thence: running South 88 degrees 24 minutes 00 seconds West by the southwesterly sidelines of Lots #24 and #23 a distance of 545 feet, more or less, to the thread of the Spurwink River;

Thence: running in a general Southerly direction by the thread of the Spurwink River (on a chord distance 966.37 feet) to a point and land now or formerly of Redmond;

Thence: running North 75 degrees 33 minutes 04 minutes East a distance of 400 feet, more or less, to a

granite monument and land now or formerly of Nerbert;

Thence: running North 31 degrees 45 minutes 56 seconds East along said Nerbert's land a distance of 345.50 feet to an iron pipe;

Thence: running North 62 degrees 22 minutes 24 seconds East along said Nerbert land a distance of 451.05 feet to an iron pipe and land now or formerly of Weinschenk;

Thence: running North 17 degrees 22 minutes 24 seconds East along said Weinschenk land and along land now or formerly of Sandler a distance of 563.60 feet to an iron pipe;

Thence: running North 74 degrees 52 minutes 24 seconds East along said Sandler land and land now or formerly of Weinschenk a distance of 490.57 feet to an iron pipe;

Thence: running South 81 degrees 07 minutes 36 seconds East along said Weinschenk land a distance of 185.00 feet to an iron pipe at the westerly sideline of Sawyer Road;

Thence: running North 8 degrees 52 minutes 24 seconds East along the easterly sideline of Sawyer Road a distance of 135.00 feet to the point of beginning.

Being a portion of the premises conveyed to Kfoury-Weinschenk recorded in the Cumberland County Registry of Deeds in Book 6554, Page 276.

The View Easement:

A View Easement over a certain lot or parcel of land located in the Town of Cape Elizabeth, County of Cumberland, State of Maine, located on the westerly side of Sawyer Road more particularly bounded and described as follows:

Commencing: at an iron pipe at the southeasterly corner of Lot #29 as shown on said Plan;

Thence: running South 15 degrees 7 minutes 36 seconds East a distance of 328.47 feet to an iron pipe and the southeasterly sideline of the conservation easement described above;

Thence: running North 74 degrees 52 minutes 24 seconds East along the Conservation Easement a distance

of 739.51 feet to an iron pipe located North 54 degrees 42 minutes 19 seconds West from an iron pipe located at an angle on the northerly line of land now or formerly of Weinschenk, which iron pipe is located North 81 degrees 07 minutes 36 seconds as distance of 185.00 feet from an iron pipe on the westerly sideline of Sawyer Road;

Thence: running North 54 degrees 42 minutes 19 seconds West a distance of 106.99 feet to an iron pipe;

Thence: running North 85 degrees 00 minutes 05 seconds West to to the point of beginning.

The Recreational Area:

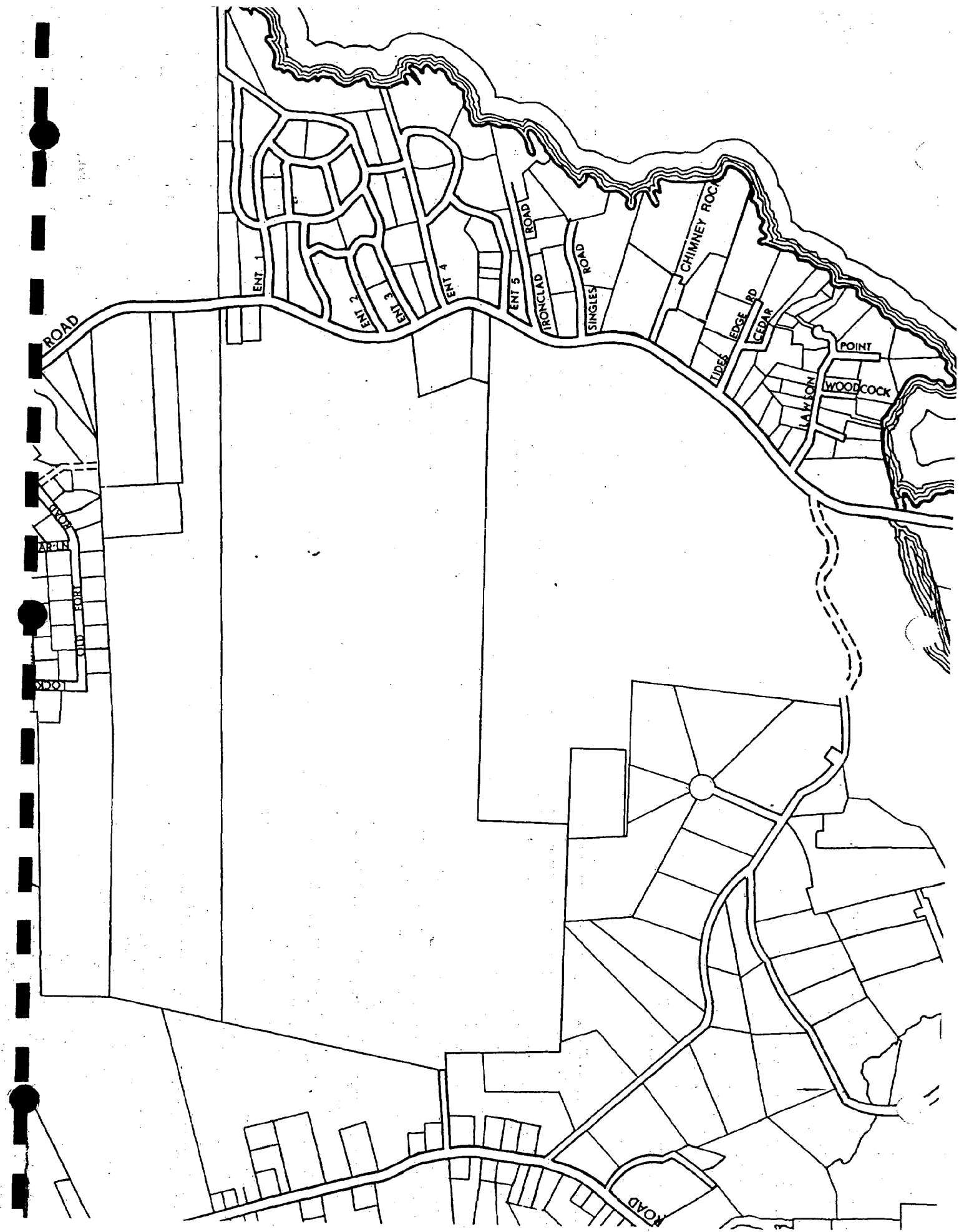
A certain lot or parcel of land located in the Town of Cape Elizabeth, Maine westerly of Sawyer Road being the Area Retained for Recreation" as shown on the plot plan entitled "Elizabeth Farms Prout Manor" prepared by R.P. Titcomb Associates, Inc., dated May 8, 1986, a reduction of which is attached hereto as Exhibit B, (the "Plan"), more particularly bounded and described as follows:

Beginning at a the most southerly corner of Lot # 24 as shown on the Plan; thence running South 34 degrees 54 minutes and 00 seconds West a distance of 610 feet more or less to the bank of the Spurwink River; thence running northerly along the bank of the Spurwink River to a point and the southwesterly corner of Lot # 23; thence running North 88 degrees 24 minutes and 00 seconds East a distance of 545 feet more or less along the southerly sidelines of Lots # 23 and 24 to the point of beginning.

Being a portion of Phase IV as shown on the Plan and being a portion of the Premises as described in a deed from Philip M. Hall and Rozanne L. Hall to Grantor dated August 1, 1984 and recorded in the Cumberland County Registry of Deeds at Book 6554, Page 276

0441H.06  
6/12/87





DATE DUE			
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